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BEFORE THE DEPARTMENT OF INSURANCE
STATE OF MISSOURI

In the Matter of:
Medical Malpractice Public Hearing

October 30, 2002
Harry S Truman Building
Room 492
Jefferson City, Missouri

BEFORE: Scott Lakin, Director
Brent Kabler, Manager
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P R O C E E D I N G S

DIRECTOR LAKIN: We're honored to have the Governor here today. He just asked me to have these hearings on medical malpractice insurance. He is here right now. I'd like to introduce the Governor of the State of Missouri, Governor Bob Holden, ladies and gentlemen.

Apparently I should have waited longer. My hunch is he got a little detained. I want to thank all of you for being here today. I think this is an important issue. I started getting calls as Director earlier this year, and it really started to pick up at the end of May about the time the session ended. And I knew it was an important issue. I've been meeting with a lot of the doctor groups throughout the State over the summertime, and we've realized we know that this is a big issue in this State. Not just for you individually -- I didn't think my speech was that good.

Ladies and gentlemen, the Governor of Missouri, Governor Bob Holden.

GOVERNOR HOLDEN: First of all, I'm delighted that everybody is here in this kind of weather. I appreciate it very much. Welcome to this first in a series of hearings on medical

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malpractice insurance rates for Missouri doctors.

I want to thank Scott Lakin of Department of Insurance, and his staff for initiating these hearings. And I want to thank those who have agreed to help us gain insight into this problem through their testimony. These hearings are in response to the annual report on medical malpractice released by our Department of Insurance.

A study on the subject by the Missouri Hospital Association backs up the findings of Department of Insurance. According to their information, over the past few years, the premium physicians are paying for this insurance has doubled in many cases. Yet, last year medical malpractice claims dropped dramatically in Missouri. Claims against doctors dropped 37 percent, and those against hospitals dropped 4 percent.

As a result, loss of paid or incurred on plans for Missouri doctors fell to 60.9 cents on each premium dollar. That's the lowest level in seven years, and the second lowest level in 11 years. At the same time the number of companies writing coverage for physicians went up from 27 to

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So if the numbers of claims is going down, and the amount insurance companies are having to pay for these claims is going down, and there's no shortage of policies because more insurance companies are offering them, then why are Missouri doctors paying more in premiums? That's what these hearings are going to find out. We want an explanation for these rate increases. We must get to the bottom of this problem, because in the end when insurance rates go up for doctors, it hurts their ability to do their job. It hurts our State's health care system. And in the end, those costs are passed on to our patients.

This is time for a frank discussion about why these rates are so high. Unlike other states, Missouri has implemented reform. We have placed limits on pain and suffering awards. And even with limits, Missouri's awards came in more than 600 percent below the limits last year.

Now, before I let you get on with the business at hand, I would be remiss if I did not mention very briefly another very important issue dealing with health care in Missouri. That's a cost of addiction to tobacco. I hope everyone here

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will vote yes on Proposition A.

It's no coincidence that Missouri, with one of the lowest cigarette taxes in the nation, has one of the highest smoking rates. Smoking-related illnesses cost Missourians $1.7 million a year in Medicaid costs in total the medical cost and disability cost. That amounts to related economic expenditure of more than $700, $700 a year for each Missourian. Prop A money is earmarked to help alleviate health care access issues. This includes helping with Medicaid physicians' fees.

But aside from the money, you see devastating impacts smoking has on the health of our citizens. All statistics indicate that by raising the cost of this product, you reduce the number of children that smoke. This alone is enough for reason to support Prop A. With that being said, I look forward to listening to the hearings today and the further hearings throughout the State of Missouri, and let us find out why these rates are going up.

And, again, I appreciate very, very much the involvement of Scott Lakin, the Director of our Department of Insurance, and his work on this

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effort and others. Scott, thank you very, very much.

DIRECTOR LAKIN: Let's hope he says that again in a few months, too. Again, I want to welcome you-all here. I think it's very important that we get together and talk on this subject. I started -- as I mentioned earlier, I started looking at this very seriously as the calls started coming in about the end of the legislative session. And we started getting a few calls and it became more intense, and we realized at the Department very quickly that this was an issue that we needed to look into and try to get the facts on.

Over the course of the summer I've been meeting with a lot of doctor groups, and making sure that we started collecting the facts. And that was based on a number of things. First of all, I'm a former legislator, and I know the importance of building public policy based on the facts, not based on hearsay and that kind of thing or antidotal evidence. So I felt, as a Director of the Department of Insurance, it was important that I really emphasize the facts.

I started talking with doctor groups. I

started talking with a lot of the insurance companies. We put out a survey to the insurance companies that are writing medical malpractice in the State, asking them -- you know, telling them they're licensed in the State. And if you are not selling or actively selling insurance for medical malpractice in the State, why are you not selling medical malpractice insurance? And there were a lot of questions that started to come about.

One of the keys that I want to do as Director, and a lot of this also precipitated by the fact that if there is legislative action necessary, we have got a situation in Missouri where we have got about 100 new members coming into the Missouri House of Representatives and a good deal of new members on the Senate side as well. So we're going to have, you know, a tremendous need to educate brand new legislators this legislative session.

And, again, it gets back to when you make good public policy is when you have the facts in order to make it on, to make that policy on. So that is really the purpose of these hearings, is first and foremost to get the facts on what is causing this crisis in the State. Secondly, I want

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to look at ways administratively that my Department can look at helping ease this situation.

And thirdly, if there is legislative action that is necessary, I want to be prepared so that when I go in front of the legislative committee to testify, that we truly have the facts, and we have the information that the legislators will need and that this government will need to make a good policy decision as to what to do.

I do have concerns as the Director, because one of the things we've got to figure out is, is this a temporary problem or are there more systemic problems in the system that we need to look at making changes for the long term. We are an open-market competition state, as far as our insurance regulation goes. We rely heavily on this competition.

What I'm seeing is that we've got a number of companies that are licensed, but not quite as many that are licensed actually selling the product and making them available to you-all. So we decided to have these hearings here today. We want to make sure that, again, we get your side. We have -- and I think it's been pretty well publicized, if you do not get a chance to testify

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personally, you can testify over the internet over on our website, and we are keeping those and reading those testimonies as well.

I also want to emphasize to those that are testifying that we have a pretty good idea, and we've gotten a lot of letters, a lot of contacts from doctors about their individual experience and the problems they are having. What I am very interested in is translating that into, you know, how do we solve the problem? I think we're sort of at the finger-pointing stage right now, to be real honest.

And the challenge I have as Director and the charge that the Governor has given me is to turn the finger-pointing stage into, you know, an action plan and into a policy stage that we can get something productive done. I've been in Jeff City long enough to know that finger-pointing rarely solves the problem. So I want to make sure that we move into that transition and get to the problem-solving stage as quickly as possible.

With that, we're going to have some Department remarks. We've got three of my staff people that are prepared to talk. Randy McConnell will talk about the national overview, Brent

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Kabler, the overview of the medical malpractice data, which we collected and sent out recently, and then Mark Doerner will talk about the results of the industry survey and some of the details of that.

So with that, I'll ask Randy McConnell to come forward.

MR. McCONNELL: Good afternoon. I'm pleased to give the, sort of, national picture behind what is happening in Missouri. It's important for a couple of reasons. A, to know that we are not alone. And, in fact, many states have much more severe problems in the medical malpractice market than Missouri does at this point in time. And, B, there's been a considerable amount of talk about the way the market works, and whether Missouri doctors and surgeons are subsidizing medical areas in other states.

As a regulator, one of the first things we look at to determine the health of a market is the loss ratio, which gives you an idea of current pricing levels, how much is being paid out in terms of claims. Across the country that indicator has deteriorated significantly in the last five years. The loss ratio in 1997 was 54.2 percent. It rose

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to 97.7 percent in the year 2000. And in layman's terms that means that for every dollar and premium that was earned by the insurance companies, 97.7 cents was paid out in terms of benefits.

Now, that figure is for all lines of medical malpractice, not just physicians. Missouri is one of the few states that actually collects comprehensive data for special lines. So, for example, we can tell what our figures are for doctors, whereas many states cannot. In Missouri for doctors, insurers reported a loss ratio of 60.9 percent in the year 2000, or well below the national figures. I would caution at this point that this includes -- there are question marks that are always associated with these loss ratio figures, because they include reserves for future payments.

And to tell you somewhat of the art that's behind this, in the year 1997 in Missouri, we saw out loss ratios for medical malpractice double that he year, because five companies became more conservative in terms of the way they reserved for future payments for medical malpractice on incidents that occurred that year. There's a little bit of guesswork that goes into this, and

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actuarial science. So these are not strictly the payouts that were made, for instance, that year. It is what the companies expect they will eventually pay for all of the pay incidents that year.

In 2001, the overall loss ratio for medical malpractice was 81 percent in Missouri, which was roughly number 20 in the country. We were the 20th best, I guess you could say in that regard. We would have been much lower except for a one-year spike in hospital losses. This is my first ever Power Point presentation, so let me see if I can screw this up really badly.

Moving on to some of the state attempts. Most of these attempts were implemented in the mid 1980s. The last time that there was a -- it was considered a medical malpractice crisis in this country. There have been three in my lifetime; one around 1974, one about 1986, and then the current difficulties occurring in the market.

Going into this year, 12 states had established joint underwriting associates, which essentially are state-sponsored medical malpractice carriers often serving as a market of last resort as a backstop to the commercial market, whenever a

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doctor or another health care provider cannot find coverage. Missouri has such authority in the law, but we have never invoked it, because the market here has worked so well for the medical community.

Fourteen states have what are known as patient compensation funds that limit the liability of health care providers for medical errors, but provide other compensation to the victims above the maximum liability awards. Missouri does not have this in the law.

Eighteen states have enacted tort reforms that sets monetary caps on non-economic damages, which are popularly known as pain and suffering awards. Missouri has such a cap. It was originally set at $350,000 in 1986, but it was indexed for inflation. And today, based upon the Department's calculations, it is now set at $547,000. Now, in this area of caps, both Mississippi and Nevada have enacted the caps this year, and it's been a major area of activity across the country. But as I said, we already had a cap in place.

Seven states have enacted other kinds of tort reforms that generally fall into the miscellaneous category. The AMA basically says

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that 12 states are facing a crisis, and they do not include Missouri. Those 12 are Florida, Georgia, Mississippi, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Washington and West Virginia. Virtually all of those legislatures have been involved in a heated debate, if not special sessions, in regard to medical malpractice over the last nine months.

The AMA also classifies another 30, including Missouri, as showing signs of difficulties and affordability and accessibility. And in Missouri up until recently, that appeared to be focused on the affordability for particular specialties in Missouri, but now we may be entering a phase in which there are greater accessibility problems, which can cause a true crisis.

And finally, at the federal level, there was an attempt to make sure that all states had similar reforms as did Missouri, although it was a bit more trichinous to pass them in the US House. The House has passed HR 4600 that would cap non-economic damages at $250,000, which is based upon a California model that is not indexed for inflation as time goes on. Theirs has been on the books since the 1970s. But the Senate has always

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been less receptive to that particular model of reform, and we will see what happens after the elections on Tuesday.

Now, in terms of market constriction, which is likely would set off the current problems in many ways. Many of you know that Fico, which is a company based in Pennsylvania, was the second-largest writer in Missouri, went under in August of 2001. St. Paul, which had long been a market leader nationally, but was not the No. 1 writer in Missouri, began withdrawing from the medical malpractice market across the US in December of 2001.

And finally Chicago, which had proved to be a low-cost insurer for the Missouri market, and it had attracted many clients over the last five years, began withdrawing from the market in early 2002. It's important to know that none of these failures or withdrawals were due to market conditions in Missouri. St. Paul, for example, had a loss ratio of 38 percent. In other words, it was planning to pay out 38 cents on every dollar in premium it had collected from doctors and surgeons for incidents in the year 2001. But because of other events across the country, it decided to

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withdraw from the business altogether.

This, however, has caused tremendous difficulties for many people in the Missouri market, because they accounted for about one out of every three medical malpractice policies written for doctors in the year 2001.

DIRECTOR LAKIN: Brent Kabler, to give on overview of medical malpractice data.

Brent?

MR. KABLER: And I would ask for forbearance as well. I'm a Power Point novice as my predecessor.

DIRECTOR LAKIN: Brent informed me about an hour ago that he felt like he was getting a pretty heavy cold. And I said, well, I know where you can find a bunch of doctors here.

MR. KABLER: Unfortunately, they haven't cured the common cold.

I'd like to focus my presentation on the results of at least a preliminary study of the components that may be driving or underlying some of the rate increases that have been observed in the market. My presentation will be based entirely on data that the Missouri Department of Insurance collects financial data, as well as a very detailed

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data set of closed claim data that, as far as I know, is unique to Missouri. No other state collects that type of data, which affords the Missouri Department of Insurance a pretty unique and detailed glimpse into what's occurring, at least on the claims side of medical malpractice.

The first place to look are trends in the number of claims filed, and the number of claims closed. And surprisingly, this data is very unambiguous, and you see it before you on the slide. Since 1987 through 2001, you've seen a pretty dramatic decline in the overall claims closed, as well as the number of claims closed with payment. And, again, it appears to be a pretty unambiguous trend.

Now, there has been some communication with insurers who, to some extent, dispute these numbers, and suggest that this is not what they are seeing. And we're certainly trying to reconcile the two versions of the numbers that we're getting and what insurers are telling us. But at least as far as these numbers go, the trend is unambiguous. And the slide in front of you is for all medical care providers, but the trend is the same pretty much for all provider types, at least that we

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capture data for.

The next slide -- and again forgive my voice. I think it's starting to go as well -- close claim count solely for physicians and surgeons. Again, you see the very same unambiguous trend, a pretty dramatic decline, at least over the long haul in the number of claims, total claims, as well as the number of payments closed with payment. We can at least tentatively conclude, at least to the extent that we have faith in this data, and we have had a lot of experience compiling the data, that claims, the number of claims cannot account for what's happening on the premium side. Again, we'll say that's tentative at this point until we're able, perhaps, to reconcile what we're seeing in the numbers and what some of the insurers are telling us they are seeing. But that's at least where we are at this point.

And I can't see the slide, so please tell me if I'm speaking of a different slide than appears on the screen. The next slide, close claim counts for hospital as opposed to physicians and surgeons. And, again, you see very much the same thing, a pretty dramatic decline in overall claims.

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Now, the next slide tracks the total premium earned in the State of Missouri and the number of losses incurred paid out. And this perhaps tells us a slightly different story. We've seen it decline, at least in the frequency of the claims, but if you look at the overall dollars paid out, again over the very long term, you seen a fairly dramatic increase given the random year-to-year fluctuations, but I think that the overall trend is pretty clear.

Now, I want to focus the rest of my presentation on what might account for those increase payouts. You see the opposite trend in premium earned has been -- it appears on the decline rather than the increase. And we, I don't believe, have as good a picture of that side of the issue as we do of the claims side. Then my colleague, Mark Doerner, can perhaps speak to that, given the results of the industry-wide survey.

So given the decline in the number of claims filed, as well as the number of claims closed to payment, what might account for increased payouts. Well, those of you familiar with insurance will probably already know the answer. And it's quite simply the average payout per claim

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has over the period of about 10 years or more increased fairly dramatically. So while claims frequently has decreased, claim severity has increased.

And just by way of explanation, this sort of crooked line you see there are the actual data points. The straight line drawn through that is what's called a regression line or a trend line, which sort of clarifies the long-term trend without respect to the random, almost fluctuating year-to-year nature of some of these data. And that straight line is very significantly pointed upwards and illustrating the pretty dramatic increase.

The next slide breaks it down, rather than medical malpractice as a whole. You see the same trend pretty much for physicians and surgeons, and a pretty dramatic increase in the average payment per claim. Now, one way to look at this, and we will certainly get to the question of what factors may account for that increase, is to look at the total paid out in medical malpractice awards as a percentage of the actual injury sustained in medical misadventures, using that term advisedly.

With respect to that measure, we have not

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seen, again, the trend over a very long period of time indemnity awards that are out of line with the monetary amount of damages received in medical misadventures. And, in fact, the trend has been exactly the opposite. A lesser and lesser percentage of actual damages received in terms of the economic value that's placed on that is compensated. And we're going through this, perhaps, trying to rule out different factors that may account for cost increases. What this would tend to rule out is behavior on the part of the legal system or a trend towards overcompensation of injuries, that we do not see.

The next slide kind of compares or breaks down awards between the economic aspect of awards and non-economics. And those of you familiar with tort liability would be familiar with those terms. Non-economic awards, commonly referred to as pain and suffering awards, are awarded over and above any economic injury sustained to compensate for pain and suffering. We have not seen non-economic awards grow out of proportion to economic awards.

Then what can account for increases and payouts? Well, our daily allows us to track the actual economic value of harm received. The data

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provides an estimate of lost wages. It provides an estimate of incurred medical expenses, both of which should comprise the bulk of any economic portion of an indemnity award. That value, the actual value given by insurers, assessing the economic value of a damage, has increased pretty dramatically over time. And that's true with respect to the purely nominal amount, that is unadjusted amount, as well as the amount adjusted for inflation. The amount of damages with respect to harm has increased much more rapidly than the rate of inflation.

So it appears that at least one of the things is driving cost or driving increases in average severity or average awards is simply the underlying economics of the injuries that are sustained. Those are growing much more rapidly than even inflation.

And you find the same thing to a lesser extent with respect to lost wages associated with medical misadventures. Those have increased faster than one would except based on actual increases in actual wages. And there you find the chart illustrating the nominal or the actual amount of lost wages, plus the adjusted amount adjusted by

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the growth in wages. So the assessment of injury and wages is growing faster than actual real wages throughout the economy here adjusted for average wages in Missouri.

And I will sum all this up. I know this gets complicated, because we are looking at many different factors, all simultaneously impacting average awards. The next slide is a slide of average injury severity. Our data allows insurers to code the severity of injury for each claim submitted on a scale of one to nine, with one being the least severe, ranking all the way up to nine data.

And if you track just the average injury severity over all claims, you find that that injury severity is pretty dramatically increasing over time, from under five to approaching nearly six. So the sorts of injuries that are being -- for which suits are being brought, as well as the source of injuries for which payments are being made, can be significantly more severe these days than they did 10 years ago.

Well, to sort of bring all these trends together brings us to the last slide, which is a variant of regression analysis, for those of you

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familiar with statistics, in which we plug all of these factors into a single equation to assess their independent impact on some variable. In this case, average indemnity awards.

I apologize, that slide is missing from my handout, so I'll try to read the screen here. What we've entered into the equation are the three factors that one most likely want to rule out in assessing growth of average indemnity awards. You would expect over time that such awards would, other things equal, grow and grow significantly, as everything else does. As average wages do, as health costs do. And all of those inflationary pressures would, other things equal and should increase average indemnity awards. The real question is can those inflationary pressures alone account for increases in awards, or if after removing those effects, is there some residual increase that requires additional explanation such as, perhaps, a change in judicial behavior, change in the way awards are assessed.

Well, what we found and, again, the findings are preliminary and something that we're continuing, is that if you control for the increase in average wages, if you control for the increase

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in health care cost, and if you can control for injuries severity, you don't find an increase in average indemnity over a 10-year period. In other words, those three things and those three things alone account for all of the increase. So it would not appear that there is any residual increase in average indemnity that would require one to resort and say two explanations about judicial behavior, about how awards are assessed, whether cases are more likely to be one and so forth.

All of the increase appears attributable to the fact that there's inflation, to the components of economic awards of medical malpractice, and the fact that the injuries, the types of injuries have grown more severe over the last 10 years, also pushing up average payment.

DIRECTOR LAKIN: Mark Doerner?

MR. DOERNER: We'll move on now to the third novice Power Point presenter of the day. Like the Director said, my name is Mark Doerner. I work with the P & C Section. And one of the things that we decided to do when we were getting the initial questions about medical malpractice was to do a survey of the carriers to find out what was going on, what their perspective of the situation

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was. And we really don't do that very often.

This particular survey was fairly complicated. We had, I guess, roughly 100 questions in the survey. We asked them about the types of premiums they were charging, had charged over recent years. We talked about the rates that they have filed and what kind of rate increases or decreases had occurred. We asked them about their losses. We talked about the types of limitations they might have had on business, whether they were planning on withdrawing from the market, underwriting the issues. And then we asked them about torts reform, and the tort law in Missouri, reinsurance and how we could improve the situation in Missouri.

We received responses from 27 companies, and I would estimate that that represented roughly 95 percent of the market that's currently writing in the State of Missouri. We still have -- a couple of the companies apparently had sent in or thought they had sent in some addendums to their surveys with additional information, and I don't have those. So we're going to have go back and ask for some follow-up information from them. But we've got some general conclusions that I think we

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can draw from the survey at this point. And I'll try my first pressing of the button, and there we go.

I guess the first thing that I thought when I looked at the survey that was of interest was this comment that we had from almost all of the major writers in the State of Missouri about the level of competition in the market. They talked about a market that up until the last year or so had been intensely competitive. And what they meant by that was competitive from the insurance industry's perspective. We didn't have any more companies really -- well, we had three more, I guess, companies underwriting correctly, but what they're really talking about we're is price competition.

And the companies that are remaining in the Missouri market, I had some concerns about what had happened with companies that have recently withdrawn from the market, either because they have gone insolvent or because they made strategic decisions to pull out of medical malpractice. But the concern was that of the companies that are remaining in Missouri's market was that these companies had, for a number of years, been charging

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prices that their competitors that are still here thought were significantly lower than you would expect, on the order of 40 to 60 percent less than that that's being charged by the companies that remain in the market.

And that is unusual information, because the Department of Insurance really doesn't track what's going on with the pricing of products. The companies under our competitive rating environment of Missouri are required to file their rates with us, and we have them on file. We don't approve those premium rates. But that's their general plan, but it doesn't reflect what's actually happening, necessarily, for individual insureds.

The companies frequently have methods of providing discounts or credits off their base rates. And so a lot of times we don't know what the companies are actually charging for individual risks and the companies that are still in the market and their survey responses seem to be saying that the guys who have left were charging a heck of a lot less than everybody else in the market. Is that why they left? Well, we didn't survey most of them, because they weren't in the market any more. And we may want to go back and talk to them to find

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out what was going on with that.

I guess the importance there of that particular point is that it may account, at least in part, for some of the dramatic rate increases that some of the physicians have been faced with that we've been hearing about. If they had been written by one of these companies that had left the market, and they had to go and find alternative coverage, in all likelihood they are going to see this sharp increase in the amount of their premium, simply because they are going from companies that have been charging a lot less than their competitors to ones that had been charging more, had rate increases over the past couple of years.

The companies that have remained in the Missouri market all seemed to indicate, generally speaking, that they plan to increase the amount of premium that they were going to be taking in, and that's reflective of insuring more individual risk, but it also indicates that they are going to be taking in more because most of them have recently raised their premium rates on an average of, I'd say, 20 to 30 percent.

Now, that's overall for the company as a whole. It doesn't reflect individual provider

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codes. It could be that for particular specialties or subspecialties, the insurance company has decided to charge more. It seemed to me in looking at the individual provider code rates, the largest one I saw was a 61 percent increase, but that was more the exception of the rule. The rule seemed to be around 20 to 30.

In addition, one of the companies that is remaining in the Missouri market that writes a significant portion of Missouri malpractice insurance indicated that while it was interested in writing more premium in the states, it was constrained by some other criteria; in this case, rating that's issued by a rating organization known as AM Best. And that's another interesting point that the survey brought home, was that while one would presume that normally in a competitive market, and if competitors have left them, and there's a business out there for those that are remaining in the market, then those companies that were remaining will simply, you know, gobble up all the businesses available.

And, in fact, the insurance industry has certain structures in it which sometimes militate against that. We have -- for example, the National

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Association of Insurance Commissioners has guidelines on various ratios of company solvency that say we don't want you to grow too fast, because in the past we have seen if insurance companies that grow too fast, get into financial difficulty later on. So if you do that, then, you're subject to additional audits and so forth.

In this case, an independent rating organization, AM Best, looked at the way when a company's business was expanded, they said, well, we've got concerns about that. We have conservative ratings. We, too, don't want to see you grow too fast. So that's a lid for that company in terms of how much they can expand regardless of how much they want to.

Another factor that we sort of sense was going to be an issue, and most of the insurance companies seem to confirm this, that there is an issue with reinsurance. A lot of companies want to use reinsurance, especially if they are writing large accounts, especially hospitals. But if they are concerned about the upper level of liability they may face, they are probably going to want reinsurance. And they have experienced higher prices in the reinsurance market. They have also

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experienced significant less generous coverage from the reinsurance.

And to a certain extent it seems like that is posing a problem for additional expansion. Some of the companies said that if they could get better terms in reinsurance, it would free up some of their capital. They could then write more business in the State of Missouri than they are now. We don't know whether that market is going to change in the future or not. Reinsurance is essentially unregulated by this Department or any other department in the country.

And finally, I guess, in looking at what the company said, their appetite for new business seemed to be largely dictated by the ability of obtaining what they thought was an adequate premium for the product they were writing. Now, I guess, you know, for trying to decide on this kind of product, you know, what a fair price is, is sometimes difficult, but that seemed to be a primary concern of the insurance industry is that they wanted to make sure that the premium they got for the product was adequate.

The carriers assessment of the medical malpractice, the general health of that in Missouri

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seemed to depend on what kind of niche of the market they attempted to specialize in. And this was also reflective of what we've been hearing by the e-mail responses that people have been sending in to the Department, telephone calls and whatnot. The market that seemed to be most problematic was that portion that covers individual physicians and small physician practices.

The other area that had fewer carriers that wrote for the market, but also had some concerns was the nursing home segment. We have heard a lot about explosions in litigation relating to nursing homes in other states, particularly states like Florida and Texas. And to a certain extent that seems to have been an issue with withdrawal of some of the companies from the market nationally. I don't know that I've heard the same thing about Missouri market, in terms of a litigation, but the companies that specialize in nursing home coverage said that they did have concerns about the nature of the litigation environment that they were facing.

But primarily I think that what we're hearing about was the individual physician segment of the market, and that seems to be the one that's

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experiencing the most problems. Other segments such as hospitals, allied health care and ancillary medical malpractice seemed to be less of a concern.

The recommendations of the insurance companies regarding what to do about this, perhaps, is not surprising, but I think pretty much universally they said that tort reform was the way to solve the problem. Some of them were very specific about the types of tort reform that they thought were effective and what was needed. And clearly the one type of reform that they considered to be most beneficial in terms of market stability was to institute caps on non-economic damages. And some of them went on in great detail to distinguish between various different types of caps on non-economic damages.

As you may or may not know, Missouri does have a statute that puts caps on non-economic damages that we enacted in 1986. The cap started out at $350,000, and it has an inflation factor built into it. Most of the companies said that that was not their preference. They pointed to other states that had caps that started and stopped at $250,000 without an index. And that seemed to

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be the one that they thought was most efficacious and controlling the cost of medical malpractice.

In addition, some of them noted the extent to which the cap supplied in multiples. And that relates to the second point. They reached a decision that was handed down by, I believe, the Eastern District Court of Appeals in Missouri, Scott versus SSM Health Care, which raises the possibility that we're going to have the Missouri cap applied in multiples when we have an injured patient.

I'm not sure that it in looking at the statute itself that the language, because it relates to an occurrence, doesn't, in fact, cover that. But a lot of people seem to think that that violates the intention of the General Assembly when they pass the legislation initially; that the notion was that there would be one cap and not multiples. But the Scott decision was one that was mentioned repeatedly by the carriers and was of a concern.

It doesn't seem to me that the Scott decision itself can have much of a relationship to any kind of increase in losses that the companies have reported to us so far, because it happened too

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recently to have been included and played a part in the data that we received.

In addition, if they went beyond caps, they generally were going to specify the California MICRA law, which I believe stands for Medical Insurance Compensation Reform Act, as the model to follow. This was passed in 1975, I believe, in California, and most of the insurance companies said that they thought this was the one that had the best chance of controlling losses.

We asked about what areas, if any, of the merging liability they were seeing in Missouri, and they indicated the ones that I've got up there. They talked about radiology, specifically, in failure to diagnose. I believe radiology was one of the issues in the Scott decision. But one of the companies went on to talk about specifically failure to diagnose in cancer cases as one where they had seen more litigation.

And in many cases this notion of emerging liability, they would say, well, we don't have enough evidence in the State of Missouri to be statistically credible, but this is what we're seeing nationally. In addition, they talk about additional liability that they hadn't seen before

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regarding pathology labs, nursing homes, we've mentioned already, and lasix surgery.

And apparently, the problem at least one company saw there was that the physicians, who are providing this service, may oversell it in their advertisements. There are some, you know, 1 or 2 percent of the cases where you have a less-than-perfect outcome, and yet the advertising apparently wasn't indicating that, and so people said they were misled.

These emerging areas were in addition to the more traditional areas where most of medical malpractice litigation had seen, such as obstetrics, emergency medicine, anesthesiology, I guess general surgery would probably be in there as well.

We asked some questions about what kind of solutions -- the solutions that we had heard of from other states or have tried in the past in the State of Missouri whether or not these would work with regard to the current problem. We talked about whether or not establishing what we call 383 companies, which means Chapter 383 of the Revised Statutes of Missouri, which allows for the establishment of mutual insurance companies set up

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by doctors to cover doctors.

We also asked about joint underwriting associations, which are essentially markets that are set up for doctors who can't find coverage elsewhere. And market assistance plans, which are basically just methods by which we get information out as to whom might be providing coverage and so forth.

The companies basically didn't think that these would be viable solutions to the problem. They, once again, went back to the notion of tort reform as being the foundation of what they thought was the way to solve the problem. Some of them also talked about what they had seen with state run mutuals in other states, and these would be entities that the state creates, perhaps finances in part as a competitive company to compete against the other malpractice carriers.

And the concern that they had with those was that many of them had failed to charge adequate prices and had run into solvency concerns. Frankly, I don't know a lot about that. We may want to go and look specifically at how many of these have been out there, what the kind of troubles they have run into. I think I know of one

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or two that have had financial solvency problems, but it could be that there are more. But as I said, they indicated that their preference was that tort reform be the way to solve the problem.

In addition, they repeatedly would go back to the notion of being able to charge adequate prices. I guess that might be in part related to this competition issue, where they had concerns about companies that they have to compete against who didn't seem to be charging adequate amounts.

I am not sure what we're going to next with the survey. As I said, we've got some follow-up questions that we want to ask from some of the companies to clarify their answers in a couple of respects. Whether we ask any questions of the companies that have withdrawn from the market, what was going on in their mind and what the dynamics were, we haven't decided that yet.

With that, I'm through with my presentation. Thank you.

DIRECTOR LAKIN: I'm going to ask -- we are now going to bring some people up from different prospective. The first is the physician prospective. Missouri State Medical Association with Dr. Greg Walker, Dr. Al Eldendary, Dr. Erol

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Amon and I believe also Dr. Debra Olson, Missouri's Academy of Family Physicians. If you will come up and take a seat. And the rest of us, since we have stimulated you with all the statistical analysis, why don't you stand up and take a stretch break.

(OFF THE RECORD.)

DIRECTOR LAKIN: The first on my list is Dr. Greg Walker.

Dr. Walker, welcome.

DR. WALKER: Thank you for the opportunity to speak today on behalf of the Physicians in Kansas City about the crisis in medical liability insurance. I know many physicians in Kansas City would like to have the chance to tell you personally what's happening on the western side of the state. We truly are in a crisis situation. I'm a neurosurgeon in practice in Independence, Missouri, and my office is a few blocks from Harry Truman's home, as is the only trauma center in eastern Jackson County where I spend most of the time practicing.

I sit before you today one day from making a decision about my medical liability insurance that could close the trauma center in Independence, and the choice I must make tomorrow is whether to

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walk away from a high-risk neurosurgical procedure-oriented specialty that many trauma patients need and the $180,000 annual liability insurance premium that comes with them. And my partner and I cover the trauma centers at Independence Regional and North Kansas City Hospitals.

Kansas City in general is somewhat on the short side, as far as neurosurgeons are concerned. And if my partner and I can no longer provide neurosurgical coverage, at least one of these trauma centers will close. There simply won't be enough neurosurgeons left in the Kansas City area to cover all of the trauma centers. We simply are not in a position where we can pay $180,000 a year for liability insurance with a $10,000 deductible if we intend to pay office staff and rent.

In addition, in order to obtain tail coverage, I would need to pay an additional $160,000 to my previous carrier for one year of coverage. That $340,000, which we really can't pay, is an expense that adds nothing to health care. It doesn't make us better physicians. It doesn't obtain better equipment for the office, drugs for my patients or any other services that

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patients need. It may pay expenses for injured patients somewhere or it may pay an attorney. Either way it's excessive, and we really shouldn't allow money to be wasted in that way.

Our situation is fairly typical for neurosurgeons in the Kansas City area. Two surgeons eliminated intracranial completely from their practice and two more are contemplating that. Another group is currently unable to insure their corporation in Missouri. Most like me are are considering ways to lower their insurance premiums, including eliminating intracranial surgery and care of patients with spinal fractures or spinal cord injuries. Or simply moving to another state, which is currently the most attractive option at this time.

Last year I paid $90,000 in medical liability insurance. And I'm looking for new coverage this year, because my insurer, Interstate, has stopped selling medical liability insurance, and that's happened to quite a few doctors in the Kansas City area. There aren't a lot of companies left in the medical liability insurance business, and those that are left aren't lining up to cover doctors like myself, who have been stranded by a

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carrier that left the market.

For the first time some doctors are faced with the reality that no one will insure them. And these are good physicians. Not the kind who have ever had trouble getting coverage before. I know of an internist out of our practice situation in Independence who has been practicing in eastern Jackson County who currently is without a job because she couldn't get insurance after St. Paul left. She was associated with Kaiser Group, and apparently any lawsuits that occurred through Kaiser Corporation ended up on her data bank, which she wasn't aware.

Other practices have had to take loans to pay their liability insurance premiums, and some physicians have even retired prematurely because they could not afford the huge increases in medical liability insurance premiums. Physicians in Kansas City feel completely victimized by the current medical insurance situation. Even those of us who are lucky enough to get quotes, are entirely powerless to medical liability insurers.

I've had two liability claims in 15 years, and those were over six years ago. Even so, I found it very difficult to replace my insurance.

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Knowing that my policy was going to expire, I started working with my broker over two months ago. We just yesterday got our first tentative quote. Usually they will wait until the policy expires or just before that time before they will give us an actual quote.

There really appears to be nothing that we can do about it without some changes. The major problem is that Missouri is losing physicians to Kansas. I know at least a handful of practices who are packing up and moving to Kansas where they can access the Kansas stabilization fund. Moving across the state line is one alternative that my own practice may consider. Kansas does have stronger caps on damages and a state fund that covers all physicians, and doctors don't have to worry that they won't have coverage.

According to the Kansas Medical Society, Kansas premiums are lower now than they were in 1989, but that's not the case in Missouri. I've told you about the problems in neurosurgery. Other specialties are also having severe problems. General surgery and emergency medicine are also in crisis. And Missouri general surgery premiums are up nearly 250 percent over last year. No specialty

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has been spared. The high-risk specialties have bigger numbers, but the percentage increases are affecting everybody.

We need action now that will lower premiums. I'm a good physician and a good communicator. My patients know the risks of the surgeries I perform before I perform them, but my record really isn't helping me at this point. Kansas City physicians are concerned that they are paying more for medical liability insurance than Missouri's claims history should require, because companies are allowed to spread the risk they incur over other states.

We're losing physicians and their services because medical liability insurance in our area is out of control. This is not a warning about things to come; this is actually happening here and right now. The medical society understands that tort reform may not be the only answer to the current problems. We need to be working every angle to get relief for physicians because we cannot survive this. We need legislators and regulators to support relief on every front as well.

The Department of Insurance can make a policy change outside of the General Assembly and

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would lower premiums or make insurance accessible to all physicians. I urge you to do it. We need help now, right now. We can't wait years for policymakers to hear this. There won't be any doctors left in high-risk procedures that patients need. That's it.

DIRECTOR LAKIN: Dr. Elbendary?

DR. ELDENDARY: Thank you, Director Lakin, family members and guests. My name is Al Elbendary. I'm a genealogical oncologist. I'm here representing St. Louis Medical Society and Missouri State Medical Society. Although many may perceive the current crisis in liability insurance as an economic hurdle facing only physicians and which has no significant affect on the public. We, the physicians of Missouri, have a different view.

Our concern is that the current crisis, if not rapidly corrected, the entire medical system in Missouri will deteriorate, threatening the health and well being of our patients. On a personal level, I'm here not only as a physician, but as a father and a husband, not unlike you and every other citizen of Missouri. My concerns are very real and ordinary. If six months from now my son were to break his arm playing hockey, will there be

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an orthopedic surgeon to set his fracture? If my family and I are in a car accident, will there be a trauma surgeon or neurosurgeon to save my life?

Perhaps some may think that my concerns are overly stated. For proof, look at what is happening in other states with similar problems. Recently MSMA has completed a survey of about 600 physicians in Missouri. The data, we believe, clearly indicates that Missouri is in the midst of a crisis of professional liability insurance. Actions speak louder than words. 27 percent of physicians are limiting the practice to reduce their premiums. 32 percent of physicians are considering early retirement. Physicians are closing their practice in Missouri and moving to other states.

Unfortunately, this is what happens when doctors cannot afford to pay their professional liability insurance.

DIRECTOR LAKIN: Doctor, those statistics were based on those that answered the survey; is that right?

DR. ELBENDARY: That is correct. Regrettably, patients and ordinary citizens suffer when access to health care is denied and

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curtailed. Unlike other states, the crisis in Missouri centers on applicability. On the average, liability insurance premiums have increased 61 percent in 2002, which was imposed on a 22 percent increase an 2001. Thus, in two years, our premiums have increased 96 percent or nearly doubled. An additional increase of 30 percent is reflected for 2003.

Clearly, no economic system can absorb such skyrocketing insurance premiums. Let alone a health care system where physicians are unable to pass on the true increase in the cost of their practice. A particular concern to the Society, is the fact that high-risk specialties, specifically general surgery, neurosurgery and obstetrics have seen this proportion of increases. As a result, we are concerned that access by Missourians to these specialists will be curtailed. Hardest hit will be those patients least able to afford it, the elderly, the underinsured and those in economically disadvantaged areas.

Let me illustrate it with a personal story. In February I was a partner in a 10-physician surgical group. Our group's premium increased from about $180,000 to $400,000. As part

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of the group, my personal premiums have gone up from 8 to $36,000, despite the fact that I had no claims against me or no payouts. This increase in my malpractice premium was an important reason why I left that group, and I why I had eliminated my rural outreach clinics. Now, women with gynecologic cancers in St. Genevieve, Chester and Carbondale have to drive 100 miles or more to receive gynecologic oncology care to receive the care they deserve.

Obstetricians have also seen the rates skyrocket to an average of $47,000 annually. Allow me to translate the simple figures to understandable facts. Just to generate gross fees of $47,000, an obstetrician would have to provide nine months of prenatal care and deliver 31 patients. If you factor in overhead, the more accurate figure would be that the obstetrician would have to deliver 62 or 63 patients just to pay his insurance bill.

This problem is much worse in St. Louis County where obstetricians with claims against them have seen their premiums exceeding $100,000. For example, Dr. David Winestein and his partner, Dr. Jerry Sanford, both respected members of the

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medical community and on staff at my hospital, have seen their premiums increase by 2,256 percent. They are now paying $114,000 each.

Unfortunately, their circumstances are not unique. Several other obstetricians, Dr. Charlene Shetegen (phonetic sp), Dr. Darwin Jackson and Dr. Sernick, who is here today in the audience, facing massive increases in their premiums, have closed their practice. Others have stopped doing deliveries, while others have left the state to practice elsewhere.

Let me ask, if obstetricians stopped delivering babies, who will? I also refer you to the case of Dr. Charles Fasilious (phonetic sp), whose new appointment has just completed fellowship training in geriatrics. His liability insurance premium have been $35,000 if you wanted to see patients in nursing homes, but only $5,000 otherwise. Is it a surprise to anyone that they elected not to go out to nursing homes?

I understand the Governor wants to improve patient care and safety in nursing homes, but I ask you, how can our citizens be safe in nursing homes and health care facilities if the best qualified doctors cannot afford the insurance they need to

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supervise.

Our health care system needs relief from increasing insurance costs. I would like to offer some suggestions. First, you can require current liability carriers to inform their insured not less than 60 days prior to their renewal date of their intent to not renew the coverage or to impose a major increase in cost. Second, I would like to encourage you to consider the need to resort to joint underwriting to stabilize the current markets. Third, carriers exiting this market while still solvent must, must be required to provide tail coverage at reasonable prices to the physicians they leave behind.

Fourth, you need to consider requiring health insurance providers to allow physicians to recover the increase in their liability premiums on a per encounter or per contract surcharge in order to preserve the insurance model of spreading the risk over the community that shares the risk.

Let me conclude my remarks as I began them, with the absolute certainty that Missouri is experiencing a crisis in professional liability insurance right now. The status quo cannot be tolerated or the entire medical system in Missouri

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will deteriorate threatening the health and well being of the patient to whom we have dedicated our lives. Let us learn from the bad. I urge you to act before lives are lost, and patients suffering unnecessarily out of state. Thank your for you're attention. I'll be happy to elaborate on any of these points.

DIRECTOR LAKIN: Doctor, one of the things that I've been hearing as I've been talking is that just as big of a problem as the liability crisis has been reimbursement rates. I'm assuming that's your viewpoint, too?

DR. ALBENDARY: That is my viewpoint. We are having a lot of problems with reimbursements. We are also having problems getting certain companies to comply with prompt-pay bill. Certainly you guys have oversight over the insurance providers as well, and prompt-pay bill would be important. But there are other things that I would be happy to discuss that you-all can do to help physicians out, as far as insurance providers can do for us.

DIRECTOR LAKIN: And I know we have a lot of doctors here. If you have prompt-pay problems, please let the Department know, because we can't

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address those problems either if we don't know the problems that are occurring.

Dr. Amon?

DR. AMON: Thank you. Director Lakin, panel members and guests, my name is Erol Amon. Professionally I practice high-risk obstetrics, and I am licensed attorney in the State of Missouri. Today I speak as the President of the St. Louis Metropolitan Medical Society, and a representative of the Missouri State Medical Association. Missouri is experiencing a professional liability insurance crisis. We appreciate this opportunity to testify and express our views on behalf of physicians and patients.

I will address three issues. First, access to medical care. Second, accountability. And third, some suggestions for action. The Missouri State Medical Association conducted a survey of its membership this summer. That survey showed one in six physician respondents had their existing professional liability insurance terminated or application for new insurance denied, leaving them searching for alternative coverage.

Almost all physicians are experiencing dramatically escalating rates. Even physicians

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without any claim history at all have seen their rates skyrocket. Some physicians have been seriously affected. I know of a good radiologist and trauma surgeons, one who is here in the audience, Dr. Busman, who are uninsurable in the primary market. This clearly jeopardizes radiology and trauma services in some hospitals. Unless something is done, timely access to high quality medical care will seriously be affected.

A survey by the American College of Obstetricians and Gynecologists show that in Missouri 1 in 80 OB/GYN physician respondents no longer deliver babies due to increased liability premiums. Fewer physicians who perform major surgical procedures, life-saving specialists will no longer be willing to provide emergency care for fear of being sued. Nor will they be willing or they might be less willing to provide indigent and charity care.

Clearly, access to quality physician care is already being affected. Good caring physicians are leaving the practice or abandoning the areas where health care is desperately needed in Missouri.

Next, we must address accountability. Our

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profession's preeminent principal is to do no harm. When a patient is injured or dies from true medical malpractice, we believe that such patients are entitled to every penny of proven damages. These cases should be settled quickly. And ideally before a lawsuit is even filed to help these patients and to minimize legal expenses. Now, data proved that the Department's own website that focuses solely on the niche of physician and surgeon from the year 2001 show that out of 630 closed claims, insurers for physicians paid 190 of these. That is the exact same number of closed claims that were paid in the year 2000. There is no decrease in that number.

Indemnity payments total over $38 million each year. Also in year 2001, 70 percent of closed claims against physicians were disposed of without any indemnity payment, zero. The average defense costs for these 440 cases were over $11,000 per claim. This totals over $5 million expended on defending meritless cases. Not only is that money wasted, these expenses in claims are indelibly counted against the physician, and are even considered by insurance underwriters in establishing future coverage and premiums.

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I ask, why should physicians, who did nothing wrong, have to pay for increases in liability premiums due to defending a claim that was disposed of without any payment? Attorneys and plaintiffs who file these meritless lawsuits need to be held accountable. There are few experiences more discouraging than saving a patient's life after trauma or illness, only to be sued because of a residual or serious outcome.

Our system of justice allows that such lawsuits, even when the physician did nothing wrong, should not be costs of defending these meritless claims, the allocated plaintiffs or their attorneys. The professions of both medicine and law should be accountable to society and should be accountable to each other.

Earlier this year, the Matthew Scott decision, Scott versus SSM, was handed down. It has significantly altered the medical legal landscape. Critics believe that this decision had, in effect, rewritten Missouri law, and it now permits multiple caps for non-economic damages. With effectively no limit on the number of caps, many worry that jury awards will increase in the future, and will further drive unprecedented

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changes that will irreparably affect health care in Missouri.

So we propose some of the following suggested actions: First, proper oversight of the insurance industry is needed, and I'm sure that will be done. Second, the Matthew Scott decision must be revisited by our Legislature. Unless effective action is taken to re-enact the Legislature's original intent in 1986 with tort reform, the net cap, professional liability premiums will continue to spiral upwards and out of control to meet the potential multiple caps now allowed for non-economic damages.

Third, the Department should take note from states which are not currently experiencing a liability insurance crisis. The leading example is California where MICRA, the Medical Injury Compensation Act, of 1975 has proven to stabilize liability insurance premiums in California for over 25 years, and that is data from the National Association of Insurance Commissioners. MICRA is worthy of being replicated here because it works, and California is not in crisis.

DIRECTOR LAKIN: Doctor, do you know if that was passed through the Legislature or was that

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a referendum?

DR. AMON: It was passed through the Legislature. Governor Brown at that time held an emergency section of the Legislature to enact it.

DIRECTOR LAKIN: Okay.

DR. AMON: Finally, we need to strengthen Missouri's affidavit of a meritorious claim, the statute that holds for that, so that the meritless claims can be relegated to history.

Mr. Lakin, Missouri physicians must be kept in practice. Patient care must not be allowed to suffer or disappear altogether in some areas of our state. Together, let's protect patient access to highly skilled life-saving specialists. Let's enact meaningful insurance and tort reforms that will stabilize and insure affordable medical liability insurance premiums, provide just compensation for every injured patient, and genuine legal protection for Missouri physicians.

Mr. Lakin, panel members, we will fully cooperate with you and our Governor in achieving these goals. I thank you for your attention.

DIRECTOR LAKIN: Doctor, one of the things I've had discussions with a number of the physicians was not only the actual lawsuit, we

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talked about frivolous lawsuits as you did in your comments, and it seems to me the biggest problem is, as far as it relates to medical malpractice insurance, is that the companies in their underwriting are using those lawsuits, whether they're of merit or not, in figuring their rates and are raising against the doctors.

And I don't know if you have any comments on that, on whether or not it might be, you know, something to look at as far as looking at the underwriting of the companies or looking at some kind of review board to determine whether or not it is a frivolous suit or not a frivolous suit. Not for judicial purposes, as much as for rating the insurance premium purposes. What's your thoughts on that?

DR. AMON: Mr. Lakin, I think you are right on point. I support you in that view. In any way I think each of your points are right on.

DIRECTOR LAKIN: I don't usually hear that, so thank you.

DR. AMON: You're welcome.

DIRECTOR LAKIN: If you want to testify at 4:30 again.

Dr. Olson McCaul?

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DR. McCAUL: Good afternoon. My name is Debbie McCaul. I'm a family practitioner in Rolla. I am fully licensed to practice in Missouri. I am also a member of the Missouri Academy of Family Physicians, and one of the two here speaking today for more than 1,000 active family physicians here in the State of Missouri.

We've all seen the stories on the nightly news. There's a pediatrician in Mississippi Delta who had to leave practice due to a five-fold increase in his malpractice. The women in West Virginia left without someone to deliver their babies. The people in Nevada having to drive hours.

And we've all told ourselves, and in fact, a lot of physicians told themselves, oh, these are in other states. This isn't Missouri. And recently a campaigning politician even told me he don't have to worry in the State of Missouri because we have caps. But I'm here to tell you, as all these other gentlemen have told you, we are worried. We're worried because these increases in our insurance premiums have effect on all of our citizens in our State of Missouri.

I am worried that because my own personal

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malpractice increased 41 percent, and I have never been sued. I have never had a claim against me, and I am not going to be able to tolerate increases of 41 percent each year. As I mentioned, I am a family physician. I also deliver babies in our rural community. There's only six of us in the town of Rolla who deliver babies. Recently two of the physicians stopped accepting Medicaid patients for obstetric care into their practices, because as pointed out earlier, it's very difficult to pay your malpractice bills on the current reimbursement scale.

Another family physician within our organization in Jackson, Missouri, Dr. Matthew Schumer (phonetic sp) has written that he's one of the physicians who made the decision to stop delivering babies. His premium would have been $35,000 with obstetrics, and were only 7,000 without obstetrics. And so he had to give up the 30 patients each year that he delivered, because you cannot pay malpractice only delivering 30 patients a year.

He's also going to give up offering vasectomies to his male patients, because his insurance would increase from $6,200, which it

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wound up being, to $15,000. His patients will have to drive 120 miles north to St. Louis to receive this procedure since he will no longer be able to do it.

These are just a few examples, and the other panel members have also expressed the dozens or hundreds of these e-mails and phone calls from all physicians across the country. In our own multi-specialty group in Rolla, our average insurance premium increase was 35 percent across the board. And this even included our nurse practitioners and physician assistants. These increases threaten health care in rural Missouri.

We quickly reach a point where it's no longer feasible for family physicians to deliver babies or perform surgery. And in many rural communities, family physicians are the only ones who offer these.

How can we help this situation? As it's already been mentioned, the California model is a very good model, putting a cap on the non-economic damages. We also can educate our public that not everything is like TV and not everyone winds up perfect after a terrible car accident or after a difficult pregnancy. We can do everything we can.

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We can do everything by the textbook, and we can get sued.

We need to look at, perhaps, a malpractice mediation board that these cases that are being brought to malpractice prior to even getting to the court system are mediated by a panel of physicians and other experts to determine the validity of the claim. This would eliminate the need for defense of these claims and eliminate the average $11,000 that is spent defending these claims. This would keep these claims off the physician's records, and keep them from having our malpractice increase over these frivolous claims.

To finish, some say there is no crisis in Missouri. Others say we are nearing a crisis. But I can tell you that in Rolla, it is actually approaching a crisis. No one is going to deliver babies if you can't afford to pay your malpractice, and we need to have these issues addressed. We believe that all these patients deserve care. Even our Medicaid patients deserve our care and deserve to have healthy pregnancies, and pregnancies that are overseen by a doctor. This care that I believe everyone, and also my colleagues in the Missouri Academy of Family Physicians urges everyone to be

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able to obtain. Thank you.

DIRECTOR LAKIN: Debbie, I was in the legislature for eight years, and some people here know that I was involved in health care. And I made a comment early in this process, you know, I remember the good old days when I used to debate physicians about access to health care. I realize recently that this, too, is a topic about access to health care, because if we have physicians moving to other states, if we have physicians retiring early, it's a big problem as far as access. Particularly in the rural areas, which has already been problematic in getting physicians to locate in certain areas of the state other than the cities and the suburbs.

I know in 1993, my first year in the legislature, we had House Bill 564, which did a lot to strengthen the infrastructure on how we deliver health care in this state. And one of the provisions in there, just one of many, we had a problem that we had physicians that wanted to donate their time to free health clinics, but they couldn't afford the liability insurance. And so we set up a pool to -- a million dollar pool to cover physicians that donated their time to free health

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clinics. And my understanding is it's worked reasonably well.

I'm wondering about maybe it being a -- and we have to be careful, because it seems like the free market and the competition, open competition model works reasonably well most of the time, except when we get into a hard market, you know, like we are today, when the stock market goes flat, and all these different factors start to converge at the same time. It creates a crisis like we are in today. But my thinking is maybe we ought to look at some kind of private public partnership where, you know, we could establish a pool to cover for the first million dollars or the first 250,000 or whatever, and then let the private market fill in the rest.

I was wondering if there's been any discussion among your colleagues or among groups you hang with regarding something like that?

DR. McCAUL: Well, I think that that is certainly an option, and an option that a lot of people would be interested in taking. I personally am employed by a large group, and we are self insured now. I don't have the carrier that increased me to such a great extent, but we are

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self insured. And that is perhaps a very reasonable option, a pool self insuring -- you know, there's communities in Florida that are allowing doctors to be self insured, because the doctors couldn't afford it.

DIRECTOR LAKIN: When you are self insured, do you have training for your doctors or set standards so that it will lessen the chance of an incident happening? Do you do training or -- do you understand what I'm saying?

DR. McCAUL: Well, I think to a certain extent, I don't think we have any more risk management training than other physicians have. I mean, I don't think that anybody practices a higher standard of medical care because you're self insured. Certainly I think you are aware of that you are funding everybody else in the organization as well, but I don't think that there's any higher training for it.

DIRECTOR LAKIN: What I'm thinking of is, I know in '93 when -- '93 was a popular year in the legislature, apparently, but we did Workers' Comp reform. And one of the things we did was if you go to a safety program, then you get a discount. And the thinking was, let's have a safety program, and

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that will decrease the number of work-related incidents, as far as injuries. And I'm thinking that if doctors were to do that, it might put insurance companies in a little more comfortable level if the doctors had some sort of certified training program or just simply talking to the doctors about not working when they are overly tired. You know, some kind of program in place that heighten awareness --

DR. McCAUL: But I think that to a certain extent that that would work, and that, you know, you should maybe -- and we are not a speciality that is without its bad apples, just like there are bad lawyers and there are bad politicians.

DIRECT LAKIN: There are a few in this room, and I will not admit that publicly. Just kidding.

DR. McCAUL: But we are an occupation that is held to the highest standard of any occupation in the world practically. We have to deliver perfection. And that is what has to be educated about. The public needs to be educated that not everybody can be safe, that not every brain surgery is going to turn out perfect, not every baby is going to be without cerebral palsy. These things

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don't happen. And until we can educate the public that these things aren't going to happen, we're still going to have suits.

DIRECTOR LAKIN: As in politics, it's usually 5 percent of the politicians give the other 95 percent a bad name. Is that happening as far as the liability crisis -- or I'm sorry -- malpractice crisis where a small number of the physicians are causing the rates to go up for all?

DR. AMON: I think if we surveyed -- I don't know the data -- but I have looked into it, and I have studied different aspects. The National DataBank, I may be wrong on this, but my last recollection of the National DataBank, 600,000 physicians in the United States, and over 25 percent of physicians are in the National DataBank because of a payment. That's one out of four physicians, and not all bad. It can't be.

And then if you talk to physicians, if we were to survey all physicians, and that survey can still be done, how many of them have been sued at least once? And I imagine that's the majority.

DIRECTOR LAKIN: I had a fairly lengthy conversation with a doctor, I think it was up in Kirksville, that we were just talking about bedside

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manner. And if you have a good bedside manner as a doctor, the chances you're going to get sued goes down dramatically, is what he told me. And it was a really interesting conversation.

DR. ALBENDARY: I think that is probably -- I think realistically in the current environment, everybody expects that they will have a good outcome. And I think realistically in the current environment, if you have a bad outcome, there is an ethic of negligence, irrespective of the standard of care. You will expect and expect to have a letter from a lawyer.

And going back to the statistics, the average obstetrician in the United States in his lifetime will have two to three lawsuits. Nowadays if you have two or three claims or if you're named in two or three lawsuits, even if you're dropped, you're all of a sudden considered high risk. So if the average now becomes high risk, you know, that will mean that the premiums are going to skyrocket, because all of a sudden the average physician is a high-risk physician. One other --

DIRECTOR LAKIN: And I think also that all the whole managed care concept where the cost is driving things, and you're cutting back on, you

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know, procedures or you're cutting back on, you know, nursing help or whatever the reason, you know, it's most a self-fulfilling prophecy because with reimbursement rates staying so low and so level, then the only way you can make more money to pay increased costs is to see more patients. And the increase in seeing patients will generate the probability or the chances of additional lawsuits.

DR. AMON: And, Mr. Lakin, what patients really want is communication, and that takes time.

DIRECTOR LAKIN: And if you have got a patient base that financial reasons the employer is changing health plans every year and they're having to change doctor networks every year, they never have a chance to build that long-term communication or that long-term relationship because they are changing doctors all the time.

I want you to know when the doctors speak, they get applause. When I speak, I get murmurs.

Dr. Walker?

DR. WALKER: I think one other point that needs to be made is in the venue of neurosurgery, emergency medicine, orthopedics, et cetera, we're doing a tremendous amount of indigent care in the middle of the night. And those patients generally

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are multi-pharmacy patients with a lot of alcohol on board, a lot of them are unemployed, and they have serious injuries. And sometimes the only way to pay their medical bills is to sue the doctor.

And I think that's a problem that you're seeing with the high-risk specialties is a function of that. Most of my lawsuits are involved with patients that aren't employed. Their blood alcohol average is greater than 200 at the time they hit the emergency room, and they have multi-system injuries, and they have no insurance. And sometimes the commercials on T.V. get to them.

DR. McCAUL: I read one other thing, and this would be a very difficult statistic to prove, and that is that people look at medical malpractice as just another quick way to get rich. You can spill coffee in your lap and get $2 million from McDonalds. So if something doesn't wind up quite right through the accident I caused from being drunk, well, shoot, man, I can get rich. And there is an element to that that goes on.

DIRECTOR LAKIN: We need to move on, but I appreciate your-alls testimony very much.

DIRECTOR LAKIN: Missouri Association of Osteopathic Physicians and Surgeons, Dr. Joseph

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Yasso and Dr. Jack Bragg.

DR. YASSO: Good afternoon, and thank you for the opportunity to speak this afternoon. My remarks -- first of all, let me say, I'm a family physician in Kansas City. I work for the University of Health Sciences, College of Osteopathic Medicine. I'm the medical director for our clinical operations, and basically we have a multi-specialty group that encompasses internal medicine, family medicine, pulmonary medicine, general surgery and obstetrics and pediatrics.

DIRECTOR LAKIN: I want to let the audience know that I was an insurance agent for 17 years. And if you're a Kansas City physician, there's a good chance I've written your name on an insurance application at some point, but go ahead.

DR. YASSO: You know, my remarks are probably going to be very short, because I'm going to say ditto to everything that's been said so far today. I think the thing that we need to focus on here this afternoon is how do we fix this problem? We are in a crisis. There's no question about that. I don't think we're one of those 30 states that are not or maybe on the border of crisis. We are truly in a crisis in this State, and we are

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going to lose physicians to other surrounding states that do not have a crisis simply because physicians are not able to pay the professional liability insurance insurance that they need to stay in practice in the State of Missouri today.

So I think the issue has to be how do we fix this? Otherwise our patients will not have access to health care in years to come. So I think that's what we need to focus on. I think the one thing I heard earlier that I feel is very, very important, would be of great help to us in this problem would be mediation of claims prior to them ever getting to a court of law. If we did that, we could probably eliminate a huge number of these frivolous lawsuits and not have that expense of attorneys fees that go into equation of paying off these -- all these claims that we have. So I think that's one thing that we heed to look at.

Another thing might be a stabilization fund similar to what the State of Kansas does. It might be helpful to the State of Missouri. These are a couple of the things that I think we need to look at. We definitely need some sort of an insurance reform. My question is, are we paying for all of the problems that are going on in the

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other 49 states of this country. If that's the case, what can we do here in the State of Missouri to insulate ourselves from that problem. So I think that's another issue that we need to look at in regards to this whole issue of professional liability.

DIRECTOR LAKIN: I think we could require companies to rate for only Missouri experience. Some of the companies we've surveyed are doing that. In fact, a lot of them are already. But I mean, the concern I have is if we start requiring that, do we have instead of maybe four companies actively selling medical malpractice, we might be down to one or two. They might just decide to leave totally. I mean, there's a cause and effect here that we've got to learn how to deal with.

DR. YASSO: Right. And understanding that, I think those are just issues that we need to look at and see if they are feasible, and if it's something we can work out with the insurance industry. You know, I think the premiums we pay have to be reasonable. They certainly have to cover their cost and the possibility of pending lawsuits that are real suits, that are real claims. But I think if we're paying for other

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mistakes in other parts of the country, those are the kinds of things that we need to try and eliminate if that's possible. Thank you.

DIRECTOR LAKIN: Dr. Bragg?

DR. BRAGG: Thank you, Mr. Lakin, for this opportunity. As you mentioned earlier, we did this a few weeks ago in Kirksville, and your attention and the the Department of Insurance is appreciated. I am a gastroenterologist, and I practice in a seven-man group in northeast Missouri, which is not only one of the most beautiful parts of the state, but home of some of the hardest working and best people in the Midwest.

DIRECTOR LAKIN: And what are you running for?

DR. BRAGG: And we like living there. That's my point. We enjoy practicing there. It's not because of our income, because our payer mix is about 70 percent Medicaid, Medicare and indigent care, and only about 30 percent commercial insurance. So quality of life is why we're there. But what that does is, it makes it very difficult to recruit and retain doctors in northeast Missouri. As Dr. Yasso mentioned, our colleagues

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have done an eloquent job of expressing what the problem is.

I would just reiterate that our problems in rural Missouri are the same or maybe even more severe because of the recruitment and retention problem. We are one deep in northeast Missouri in gastroenterology, rheumatology, cardiology, spine surgery, urology, and vascular surgery. And those, along with OB and orthopedics, are the most hardest hit by this whole insurance problem. If we lose any one of those folks, we don't have coverage in those areas at all.

And obstetrics and gynecology, at the first of this year we had three residency-trained obstetricians. We're down to two, because one decided not to pay the insurance. We had six family doctors delivering babies, which you find almost only in rural Missouri anymore. One of them who has practiced obstetrics for 22 years had one lawsuit eight or ten years ago, found his premiums going from $22,000 this year to 90,000. He decided to quit. The insurance company said, fine. Your tail is going to be $180,000. He was forced to continue in spite of wanting to quit.

The spine surgeon found himself in the

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same predicament. It costs too much for tail coverage for him to quit. I think that what we're facing in northeast Missouri, Mr. Lakin, as you've heard us say in Kirksville the other day is, it's going to be a problem with access. If we have another year of increases like we've had this year, it's very possible that there could be an 18- to 20-county area in northeast Missouri where no one delivers babies, where there's no interventional cardiology, where there's none of these other services that I mentioned. And that would be hard on the people who we take care of.

As far as solutions go, I think a lot of potential things have been mentioned here today. The ophthalmologists that we used to have moved from Kirksville to South Carolina. His insurance went from $18,000 a year to 6, I think primarily because they have a pool of some sort in South Carolina. And whether it's that solution, whether it's California MICRA, what they do in Kansas, I think there's a lot of things we could look at. But we would urge you, as others have, to do whatever you-all can to help us solve this problem so we can continue to deliver care in northeast Missouri.

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DIRECTOR LAKIN: Do you think if we have a situation where the doctors -- as you have mentioned, you lose one doctor in one of those specialties and there's no coverage, could the State be opening itself up to lawsuits based on we're offering Medicaid to people in that area, but they have no providers to go see? We have seen that in transportation in the State. I bring that up because I think that's a real possibility or one concern.

DR. BRAGG: Not being an attorney, like the other fellow, I don't know. The things we don't have services, for people have to go to Columbia or Quincy or Iowa City to get. So I don't know, frankly, the answer to your question.

DIRECTOR LAKIN: I'm not sure I was asking you a question. I think I was making a point, but I appreciate it.

Anything else you want -- either -- thank you very much. I appreciate it.

(A BREAK WAS TAKEN.)

DIRECTOR LAKIN: Next we have the Physicians Association Panel, Bonnie Bowles and Dr. Julie Kristin Wood with Missouri Academy of Family Physicians.

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Now, Bonnie, you've been in my office a number of times lately. So I'm going to make sure you stay consistent in what you say.

MS. BOWLES: I agree. I'm going to make very sure of that, Mr. Lakin. And I'm not going to criticize your child program either.

First of all, I do want to thank the Department of Insurance for the time that they have given to the physicians, osteopathic physicians in this State, as well to myself this summer. I truly believe that your Department is looking for resolution, and I believe that everyone in this room today wants resolution. And if we work together in a non-self-serving manner, we'll be able to resolve this issue.

First of all, I know that we're not one of the 12 states that are in crisis. I don't think Missouri has to be shown this time. I think we need to move forward with resolution. I don't think there is an easy or a one-answer solution to this problem. I believe that we need some insurance regulation, something that will allow your Department to make sure that insurers are not using the State of Missouri as a mechanism to take care of some of the problems that they are having

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in other states. If, in fact, they don't want to sell insurance here because they can't pass off their cost, I'm not too sure that we want them here in the first place.

The second thing I would like to make very clear to the people in this room who are not from the physician community, is that we are all at blame. We would like to point fingers at everybody and say it is your fault, it is your fault. Each of us need to accept some responsibility. Certainly the osteopathic physicians in this State believe that anyone who is injured, should be taken care of. But astronomical claims in our court system today are not appropriate. And passing that on to an individual and allowing the rest of society to suffer is not necessary.

We also could be looking at paying out claims over a period of time. We could be looking at arbitration boards. But certainly the Department of Insurance, I'm sure, will work with us. I think we need to look at what we have done to the physician community. What we have done here is, we have done everything possible to take care of the small guy and try to contain health care costs. We now have managed care, so there are no

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physician/patient relationships, because everyone is changing their insurance on an annual basis, so those strong ties are no longer there.

Physicians are forced to see more and more patients because of patient satisfaction. Did you wait in the physician office 10 minutes? If so, you get a little red mark on your sheet. We need to look at all of these things that are affecting health care costs. Then we look at our Medicaid program. Mr. Vadner, I don't mean to be hurtful, but the fact of the matter is we should be proud that we are 47th in the nation for reimbursing our physicians in the state. 33 cents on a dollar, now where do you shift that cost?

Mr. Lakin, I got a hand.

DIRECTOR LAKIN: I know. I'm jealous.

MS. BOWLES: We have looked at a reduction of Medicare of 5.4 percent, and it could go to another 1.4 percent in January. We have done everything in the business community. Tell me Ford Motor Company would ever allow the government to tell them what they were going to sell a car for. But Ford Motor Company will discount a physician's rate down to the bottom dollar if they can get it through managed care. So now we have discounted

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the physician's fee in the private sector, Medicare and Medicaid are underfunded, and the physician community is asked to see the indigent, which they do, which they do.

So what have we done? We have controlled their revenues, but we have done nothing to control their expenses. HIPPA alone for businesses and health care will cost us billions of dollars. Physicians are feeling that. Insurance claims and government bureaucracy is costing physicians more and more money. They are hiring more people to fill out insurance claims, so we need some help in this area, too.

So as you have controlled their income, but you have not controlled their expenses, you are hearing them say there will be an access to health care because they simply will not be able to keep their office open. We had one physician in rural Missouri who told me that if her mother would not have passed away and left her dollars, she could not have paid her malpractice insurance.

So we have a crisis in Missouri. I don't know how they are comparing that in other states, but I don't think we need to see it get any worse. I think that we need to take action legislatively,

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regulatory, and any other way we need to, to make sure that the people in this state have health care. It will affect you and your children and mine.

Now, I'm sure that at some point in time today, we're going to have people get up here and tell you of the God-awful things that the physician or a hospital has done to my family member. Unfortunately, sometimes that cannot -- we cannot help that, as the physicians have said to you today or sometimes it may have been in error. And we do not deny that. We do not deny that.

But I will tell you, Mr. Lakin, there are far more people in this state who are alive today because of the physician community in this state. People are living longer and better because of physicians. And I think that is a message that everyone in this room needs to get out to the public. Because quite frankly, I'm tired of seeing them take the heat for something that's not necessarily their responsibility. So whatever this Association can do to help this State, we will do to get this issue resolved. Thank you.

DIRECTOR LAKIN: Dr. Wood?

DR. WOOD: My name is Julie Wood. I'm a

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practicing family physician in Macon, Missouri up in Dr. Bragg's corridor, and one of the family physicians that delivers babies up there that is at risk for having to stop that as well. Today I'm here representing the Missouri Academy of Family Physicians, which is a group of more than 1,000 practicing active family physicians in our state.

You have already heard the testimony of my colleague, Dr. McCaul, and have heard from several other physicians today on the impact that this is having on their practice and their patients. I'd like to provide you a little bit different perspective.

As President of the Missouri Academy of Family Physicians this year, I've traveled across the state, and I've been talking to medical students and residents about health care needs of Missourians, and the very important need that we need to fill for them. This is especially true in rural and underserved areas. And traditionally that's an important area for students and residents they usually go to serving the underserved at that time.

What I'm hearing from these future physicians and future family physicians is that

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Missouri is not a place that they want to practice in. Medical students and residents are saying this for a couple of different reasons. And one of them is the one we're discussing today, which is liability, and the other we just touched on is reimbursement. Family practice residents that are realizing in order to provide the scope and practice that they are trained in, they will most likely need to leave the state. They are going to places like California and Colorado and New Mexico, and not because of the weather or the skiing there, but because of the cost of setting up practice, including professional liability are not there either.

We are very concerned in the Missouri Academy about our ability of our patients to have access to care in the short term as more physicians limit their scope and practice due to increasing costs. And we are concerned about our patients in the long term, too. Physicians are having to leave the state, and the ones that we are training in Missouri are leaving the state. I've included in the folder that you have from the Missouri Academy a copy of this testimony. In addition, there's an article from Family Practice Management written by

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Dr. Rich Roberts. It's an excellent article. And a lot of it summarizes what we've heard today. Dr. Roberts is a family physician and also an attorney. And Dr. --

DIRECTOR LAKIN: Is he from Missouri?

DR. WOOD: He is from Wisconsin, in rural Wisconsin. And he outlines an approach which the Missouri Academy supports. And it's a three-step approach to the crisis we're facing here. And the steps include public education, which has been touched on. And his quote was physicians and the media share responsibility to provide a realistic portrayal of medical care so people have more reasonable expectations of what physicians can do. And I think that's an important point. Not only physicians, but the media as well.

Improve legal defense was another point, and then tort reform. And he specifically cited, and we also support, the MICRA, which we referred to today, the Medical Insurance Compensation Reform Act, which was passed in California in the '70s. Caps alone, though, are not sufficient. A combination of remedies, including reduction of statute of limitations, periodic payments which allow for payments to be made over time as they are

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needed rather than in lump sum, alternative dispute resolution which has been touched on by several people, and a consideration of a loser-pays approach.

One of our greatest resources is our human capital. We cannot afford to have the best and brightest educated in Missouri to leave unless we work together to create a Missouri that has a future for our future physicians. We would need experience and inclusion of our health care system when our practicing physicians limit their scope and practice or leave practice altogether, and the pipeline of trained physicians and those studying medicine collapses. Thank you.

DIRECTOR LAKIN: Thank you very much. I appreciate it.

Next will be hospital perspective with Missouri Hospital Association.

Daniel or Dwight?

MR. FINE: Well, I think, Mr. Director, you've already reminded the audience, we have an opportunity next Tuesday to do something about inadequate Medicaid reimbursement for physicians. I think that's a very positive step in the right direction for our state to improve access to care

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for very vulnerable populations. And --

DIRECTOR LAKIN: It sure would make my job easier.

MR. FINE: Exactly. So I think that's a ray of sunshine, though we've got to get over that hurdle of the election next Tuesday. And would urge everybody to get out and vote, regardless of your thoughts on it. We have over the years invested a lot of time and resources in attempting to understand the professional liability market, and the way that it works in the State of Missouri. And over the course of the time, and I have shared with you-all some charts and graphs that will look very familiar to you, because they are based on your databases, which we have found to be exceptional and very helpful to us in the research we have done through the years.

Some fundamental shifts in the insurance market as we see it over the last 15 years or so, we find that it is a market that has many participants. We share one graph with you showing that nationally the top 20 insurers write about 73 percent of the business. So it's a highly fragmented market, in that there is not one dominant insurer. So when you say that St. Paul is

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pulling out of a market, that's less than 10 percent of the market shared nationally. And in our own state, I think St. Paul is a little under 6 percent as a share of the market. So we do have insurers who are writing the product.

I think within that mix, a couple of changes we would share with you. In the earliest malpractice crisis that I remember, the '73 one, you authorized hospitals and providers to create their own insurance arrangements that could be industry owned and locally controlled. And we created one of those organizations for Missouri hospitals.

As we encountered the '85, '86 crisis in professional liability coverage, we had, I believe, two or three Missouri-owned physician based companies that were a part of that dialogue. And since then, those companies have become part of larger national organizations. So that's been another shift in the market that I would share with the group.

Another fundamental change we see is the domination of the market by what I would call specialty writers. Not multi-line insurance companies, but companies who are owned by the

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medical professionals that they insure, and whose mission statement says we're trying to produce a product that best meets the needs of the various professions that they market to.

As we look at the '85, '86 crisis seem to be driven more by enormous judgments. I remember judgments of 12 and $15 million of virtual withdrawal from the Missouri market of reinsurance mechanisms, which made it virtually impossible then to purchase professional liability insurance. It seems to us as you look at the current trend, that we have more of an economic crisis than a tort crisis.

And we looked at the fact that the insurers invest a significant portion of their reserves in the bond market. And we have a couple of charts prepared by a couple of different firms that showed that the investment income is percent of premium income has declined significantly between 1995 and 2001. So clearly we think that the declining investment income is a factor that would influence the chart on page 7, if you want to look at that chart. It specifically talks about change in direct written premium for physicians. And you will notice from 2000 to 2001, that that

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trend line jumped up by 25 percent. So the premium written in Missouri was not a 25 percent increase and the number of physician buying policies increased 25 percent.

As we look at that we think that probably part of that premium increase is driven by the declining investment income. But as we look at total premium written for physicians of 77 million, and on page, I believe, 8 and 9 -- 8, 190 claims closed with payment had an average payout of $202,000. Kind of a potential payout there of about 38 million. And knowing that on top of that 77 million, there is probably somewhere in the neighborhood of 30 percent investment income. We're not sure that it's driven exclusively by the declining investment income.

And wonder -- and only have antidotal examples and no clear evidence -- but wonder if partially the prices in Missouri isn't driven by the experience in other states where professional liability reform was not enacted in '85 or in the earlier cycle of '75. But clearly the crisis that we see and anticipate based on a survey by the Missouri State Medical Association that when you do your report for 2002, that premium really written

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could be up another 25 to 30 or 40 percent. That you then have us back to a number that is higher than the peak of the last cycle of malpractice insurance premium costs.

If you look at the chart on page 7, in 1994 physicians paid $86.5 million for their premium for that year. And if we increase this current premium of 77 million by another 25 percent, we will be at a number that exceeds that.

DIRECTOR LAKIN: Can you repeat that? Because I'm not sure I'm understanding.

MR. FINE: If you look at that graph on page 7 --

DIRECTOR LAKIN: Which book are you on?

MR. FINE: It's the one for physicians.

DIRECTOR LAKIN: For physicians. And you keep saying page 7, but there's no page numbers.

MR. FINE: Well, it's the very middle section. And this is a chart based on --

DIRECTOR LAKIN: Directors like page numbers.

MR. FINE: Yeah. Okay. We'll try and put that on the later graphs. If you look, Scott, at the number for -- at the bottom of the graph, premium written in Missouri for physicians is

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$77 million. The prior year was 61 million. That's a 25 percent increase in direct premium written. And what I was pointing out, if you go back and look at 1994, which was kind of the peak of an earlier uptake in the premiums charged to physicians, that was 86 million. And based on the MSMA survey, I would assume that year 2002 number will be a higher number than 86 million. I would fully expect it to be in the 90-million-plus range.

And if that's the case then, what we're focusing on is that clearly we have a crisis. We have insurers who will sell the product, but we have a physician community who can no longer absorb that crisis, whether it's a result of declining income from the bond market or whether it's a result of cost shifting from other states that have had much worse experience than Missouri.

Whatever the cause, the crisis, in our opinion, is more one of economics than it is -- if you just flip over one page, when you look at the trend lines on claims closed with payment, that trend line is dropped from 337 in 1990 to 190 in 2001. So clearly these are very positive trends. The cost per closed claim is up. And to a degree

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that's troubling. And I think they may cause us to revisit some things such as the recent Scott decision.

DIRECTOR LAKIN: So you're saying that it's not -- in your view it's not -- it's economic factors that stock market or the investment markets more so than any changes in the legal system, spikes in claims, things like that?

MR. FINE: And if you look at it, it's kind of interesting. You take the 190 people who got payments as a result of closed claims in 2001. And that payout to them was 38 million. And let's just assume for a minute we connect every bit of tort reform that's left for us to enact, and then let's just assume that gives us a 20 percent savings in those closed claims. That's $7,689,000. So I think to say we can fully --

DIRECTOR LAKIN: It's a lot broader.

MR. FINE: Yeah. To fully solve this problem with -- while we're supportive of some of the components of tort reform, to think that we're going to fully solve it in that fashion, I don't think we can. And I think that it's really time for us to revisit, and I think you are probably a part of those discussions, when we were trying to

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obtain coverage for an obstetrician under the state legal defense fund, some way I think the state government needs to come to the table, be a partner to the discussion. Officially what we put forward here is a discussion of would it be appropriate to have a tax credit for physicians. Another state, West Virginia, has adopted such a law.

But in some way if you look back at that graph on page 7 where the premiums paid by doctors just go up and down in a cyclical nature, we need to figure out how to intervene and have a counter cyclical trend that steps in and helps offset the big increase in costs in those years when the premiums are being driven up so steeply in such a sort period of time.

Clearly, I heard Bonnie Bowles talk about some kind of a screening mechanism or a state fund. Some states use a state fund. Though, when I look at closed claims with payments and with that trend, I think the system is probably doing a pretty good job of sorting through claims and figuring out which ones merit payment. The costs that we're incurring for those claims that don't earn a payment, might be another area that we would look at.

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DIRECTOR LAKIN: One of the things I'm seeing as Director of the Department of Insurance is -- and it really hit after 9/11, that we have got a lot of companies and their risk managers, they are so risk adverse that it's causing problems in all lines of insurance, not just medical malpractice.

And the comments were made to me from other carriers in other lines that we can't afford to make any mistakes. And it seems to me that the companies have gotten very sloppy through the '90s, as far as setting their premiums in accordance to what the risk was, because they could make it -- if they charged a lower premium and got the business, they could get the premium in the door and take it over here on the investment side and make a lot of their profit based on the investment side. And when that dried up in the last couple of years, they were in a rock and a hard place. And the only place they had was to raise the premiums.

So what's happened is, we've kept these premiums superficially low for years now. Instead of getting a 10 percent increase over a six- or seven-year period, you know, 10 percent each year, what we've done is, the companies have done, is

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they are socking it all at once in a one-year period.

And it's very problematic for me as a regulator, because we end up having hearings like this because the sticker shock is so great. So I think that we've got risk managers in a lot of these companies that are so risk adverse. And one of the concerns I have is that I don't want to screw this up. I don't want to make recommendations, and I'm a former politician, I guess. And I know it's easier to say, okay. This is the problem, and do something minor to correct it, and then be able to go back to your constituents and say, well, we took care of that problem. We can move onto the next issue when we really didn't take care of that problem for the long term. We might have given, you know, elected officials some political cover for awhile, but that's not going to solve this problem.

I think you're right. It's a bigger problem than just pointing our finger at one issue and trying to get to the root causes of the problem.

MR. FINE: Clearly, if you can -- I'm saying this in gist -- you believe what you read in

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newspapers. And I really had this point confirmed in a presentation where the national representative for the Physician Insurance Organization talked, and he talked about a strategy employed by St. Paul's where after the last round of tort reform they didn't adjust their premiums. And significantly reserved more funds significantly greater than needed.

And at some point in the mid to late '90s decided that they could allow those dollars to flow through their financials to the bottom line, which then made St. Paul look for profitable, and it also allowed them to be more competitive on price, which probably would buy some market share. And it triggered a round of competition in that insurance market that led to the lower premium written would be our observation based on --

DIRECTOR LAKIN: I've had some companies that write med mal say to me, Well, you know, Mr. Director, it's your fault that this happening. And I said, Excuse me, please? And they said, Well, if you didn't -- a lot of the states, they are not telling us that we're charging too little. And my response was, Well, you're not going to put too many commissioners in the position of saying,

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no, you're charging -- you're premiums are too low. You need to raise them. You know, we'd have multiple hearings if I ever made that decision.

But it does cause problems, because then you get these fluctuations up and down of the competition is strong, so the prices stay down low, and then get St. Paul to pull out or Chicago, and all of the sudden that's not as much competition or because of investment decisions or investment characteristics they can't make their money over there, so they have to raise their premiums and causes these wild fluctuations, which is -- we have got a bunch of doctors in this audience, and they could be treating patients right now. But they are having to come down here, and they're having -- I mean, I've talked to a lot of office managers the last four or five months that, you know, there's a lot of stress in those offices right now because, you know, they are scrambling to try to get this taken care of.

And I don't want to be here three years from now saying we've got a problem again like we did in 2002. So if we can arrive at some of the these solutions that will help solve the problem long term, not just short term, that's, I think,

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what I'm looking for.

MR. FINE: Clearly, we would be supportive of giving the Department power to approve premium increases to determine that they are based on Missouri experience. We think that the loss of our Missouri-based insurers really hurt the market in Missouri. We would recommend as a solution that we attempt to re-establish a Missouri-based insurer in this market.

And we would also suggest that you look at the Workers' Comp model to see if there is even a need to charter some kind of quasi governmental insurance pool. I don't think -- I think that's probably the lower of the priorities. I would really like to see some kind of economic intervention on the part of the state either through an enhanced Medicaid reimbursement or the tax credit idea to help physicians pay these premiums. But I agree with you clearly --

DIRECTOR LAKIN: The problem is where do you get the money?

MR. FINE: Where do you get the money, absolutely. But to your point, what kind of a hole do we dig for ourselves if we have the coverage promise, and there's nobody delivering the care.

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So it is a fine balancing act that we would call on, in this case, probably the General Assembly through the proper appropriations process.

DIRECTOR LAKIN: I know Governor Holden has called for a review of our tax credits and loopholes and things like that, and really a review of our tax code on making sure the right incentives are in place. Maybe we could switch a wrong tax incentive to a good tax incentive.

MR. FINE: I didn't say that on the record.

DIRECTOR LAKIN: What did you say? I'm sorry.

MR. FINE: I said do we want to repeal some of the other tax credits to --

DIRECTOR LAKIN: I don't know.

MR FINE: Two other thoughts before the time expires. I brought you an additional graph, and I heard a reference to MICRA a while ago. And I think MICRA is kind of the best tort reform that's been enacted, and it occurred, I believe, in the '70s. And it is a very flat line in terms of premium increases, if you will look at that trend over time compared to all the other states.

We did pull Missouri out of all of the

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other states, and compared the Missouri increases as a percentage to MICRA. And our performance has been as good as California's, maybe slightly better. So I think that, again, argues for the point this is an economic crisis. There are probably some things we should look at on the tort side.

I would especially mention to you the recent Scott decision. When the parties came together in '85 --

DIRECTOR LAKIN: I do wish that was another name, but go ahead.

MR. FINE: Yes, right. It's a last name. As the parties came together, we all agreed that there would be a single cap. And the variation we allowed was per provider for non-economic damages. And now the courts have reached that, and I think it merits review.

The other thing, Scott, that really has struck me, and maybe something has changed in the last few days or weeks, but after Nevada went through all the turmoil and got their tort reform enacted, and I encourage the states where they have done this to do it. We did it in the '80s and it has helped. But now they are having trouble

finding premium relief. So I'm also saying --
DIRECTOR LAKIN: So they enacted the reforms, but the premiums didn't go anywhere.
MR. FINE: Even the state fund didn't lower the premium. So it tells me -- that doesn't argue against tort reform in my judgment. But it tells you tort reform is a long-term solution and its impact on insurers are not going to react to it immediately if this is --
DIRECTOR LAKIN: They are taking the wait and see?
MR. FINE: Yes.
DIRECTOR LAKIN: One of the things I think would help is, you know, we've got -- seems to me we have three or four companies that are actively selling, even though we have a lot more than that licensed, and have the major portion of the market share. How do you increase that competition? I mean, how do you get, you know, doctors with eight or ten quotes in front of them rather than one or two? And then also, how do you get them getting those quotes in front of them prior to a day or two before their coverage runs out?
MR. FINE: I think that's why I suggested that we look at do we really need to charter a

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state insurance company that comes into the market and markets, and bases that on Missouri experience. As I said, we had formed one of the Chapter 383 hospital-based companies. I think they are probably talking to your Department about developing a line for the physicians in Missouri focusing primarily on physicians who have staff privileges at a hospital that insures through HSG so there's a link.
But clearly, we would like to see more insurers come into the market, and we would like to see some Missouri-based insurers in that market.
DIRECTOR LAKIN: Now, you had this joint underwriting association, and it worked well until the private markets rates went down, right?
MR. FINE: Well, I think what happened in the hospital end of the business, so many hospitals now self insure, that it's a very small segment dollar-wise of the industry that would buy the medical professional liability insurance coverage. I think if we could provide that same benefit.
And, again, if you look at that graph on page 7 we were talking about, the hospital line of premium written has really been relatively flat over the years. That's, I think, due in large part

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to our ability to self insure. And it seems to me that physicians, being more fragmented in structure in its smaller groups, it's harder for them to take advantage of that kind of a concept. So that's why maybe the state needs to put the pool together or some of them coalescing together or our company trying to figure out how to put together a pool would take advantage of those principals.

DIRECTOR LAKIN: Anything else?

MR. FINE: No. I think that pretty well sums up the recommendations that we wanted to share with the group. I would just simply say we do think it's a crisis. We think there are a lot of physicians out there who are really struggling to pay the premiums. We're going to have a loss of access if we don't figure out an effective way to intervene. And clearly want to be a part of the dialogue with you and your Department and the General Assembly to work on a solution.

DIRECTOR LAKIN: Daniel, do you agree with everything that Dwight said?

MR. LANDON: Well, actually, of course, I do. I might just add very quickly that in putting together a lot of these numbers and charts and graphs, there is a real tale to be told there, but

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I think the real tale is what you probably would have experienced in your former life as a former politician. That is, what is the crisis here? Is it that a hospital might be paying a lot more in malpractice premiums than they were?

Your average constituent probably says, well, that's bad, but it's not a crisis. Is it even that a physician, who formerly was in the community, may have to quit doing that and become a director of an HMO. Also a tragedy, but is it a crisis? The crisis is that there is a woman out there who is pregnant whose baby is coming, and there's nobody there, in the popular vernacular, to catch it. And that's the real crisis, it seems to me.

There are various proposals that are being about tort reform. Those are well and good, but they are long-term solutions. Because of the way the whole process works and the legal system works, that child who comes out will probably be in preschool, maybe in kindergarten before the insurance premiums start to come down from the virtue of those tort reforms. And I think what we're looking at is what is the immediate answer, because there are people who can't pay their

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premiums now. With that, I'd be happy to answer any questions.

DIRECTOR LAKIN: We're running a few minutes ahead of schedule, and the Director needs to take a bathroom break. But more importantly, I have a court reporter here that's typing her little fingers off, and I'd like to give her a little bit of a break, too. We're going to reconvene about 10 till 4:00 and listen to the insurers' perspective, so I'm sure you will want to hear that.

(A BREAK WAS TAKEN.)

DIRECTOR LAKIN: We'll go ahead and take up where we left off. We've got Andy Bennett with Intermed and Geri Morrison with Medical Assurance.

Andy?

MR. BENNETT: Thank you, Scott. First I'd like to thank you, Scott, and the Governor for calling this meeting. Surely there was some things that came up in the 2001 medical malpractice report that warranted some discussion. And I appreciate you opening -- and physicians' concerns, all of which created some concern, and I appreciate you opening this up for further discussion on that.

We only have 15 minutes between the two of us. I tried to tone down and cut out some of the

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things I was going to remark on. One thing that I'd like to start out with that I wasn't going to start out with, so I can get in two or three times during this discussion, that is that I've heard now from the Governor and from the Department of Insurance and Missouri Hospital Association and one other person, who I can't remember, that the rates being charged by the Missouri insurers are based on risks from other states. I'd like to tell you now and tell you again in about five minutes, and then if I have time again after that, our rates are not based on claims history in other states. And Ms. Morrison's medical insurance, her rates, are not based on historical data from other states. They are based on what we're doing here in Missouri.

DIRECTOR LAKIN: How many states do you insure?

MR. BENNETT: Just Missouri and Kansas.

DIRECTOR LAKIN: So you keep Missouri separate and Kansas separate then?

MR. BENNETT: Yes.

DIRECTOR LAKIN: Are companies generally, if they sell medical malpractice on a more national basis, do they group the states?

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MR. BENNETT: Scott, companies can do it either way. Our company, and I believe Geri's are the same, have separate companies writing on just our paper in Missouri and Kansas. And we base our rates on just the companies where we are writing. There are companies that just have one insurance company to get admitted in various states, and I frankly don't know what they do. But I know that Geri and I between the two of us have, I think, a better than 40 percent market share in 2001, and we base our rates on --

DIRECTOR LAKIN: My sense is everybody's right. I mean, Intermed is, you know, Missouri and Kansas, and you separate the two states. But there are companies out there that have the national --

MS. MORRISON: And I'm curious, who are they? Honestly, I don't know. We hear this in an accusatory manner in just about every forum we speak. I'd like someone to tell me who they are referring to. I think that's a legitimate question, and it's not Medical Assurance. Is it not Intermed. And we, especially after this year, are insuring a line share of the market. If it was chicago insurance, guess what, they are gone. If it was St. Paul, they are gone. If it was CNA,

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they are gone. If it was, Fico, Pie, they are gone. So to make that accusation and get the doctors of Missouri upset by that, I think they should have to, then, put the evidence on the table, because it's simply not true with Medical Assurance or Intermed.

DIRECTOR LAKIN: I don't think it's ever been portrayed that that is the only cause of the rise of medical malpractice premiums. But I think that's one thing you can get to the bottom of and that's why we're having these hearings is we need to find out, you know, exactly. That's part of the fact-finding mission that we're on, how many companies do and other companies don't.

MR. BENNETT: And I assume, Scott, that what is filed with our rate filings, I believe has sufficient information in it that the Department could probably look at if there are companies that are doing what has been suggested, you would know. And if they are not, then we think the majority are not, then at least the Governor won't continue to tell the state that that is what's happening.

DIRECTOR LAKIN: Which lends itself to the question why are premiums going up. Go ahead.

MR. BENNETT: That's where I'm getting

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next. There is, I think, a crisis in Missouri. It has to do with both availability and cost. The availability problem is not necessarily so much of whether you can get insurance, but where you can get it. And a lot of times that is in the non-standard market and that's not attractive to any physician. That's also an area where you're looking for cost. Physicians are getting hammered in the non-standard market.

But with regard to rates, I agree the rates are going up. And my concern is not so much the rates have gone up to this point so that they are unbearable, because if you look at some historical data, our rates are not significantly higher than they were in 1996. They went down, they have gone back up. They are up higher than they were in 1998 and 1999, but not tremendously greater than in 1996.

But we're on our way up and I don't want for -- those people were saying we don't need tort reform because rates are not that much higher than 1996. I would like to respond, that's true, that the rates are continuing to go up and we need to look at frequency and severity.

DIRECTOR LAKIN: Andy, when you say that,

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is that adjusted to inflation or anything like that?

MR. BENNETT: No. We will write and continue to write in Missouri and want to continue to write in Missouri. We have to charge what our actuaries tell us to charge, and they are going to base their rates on our Missouri history. If we don't write at a price that will keep us in business, then insureds will end up with Pie and depending on cases, the Guaranty Fund, a company like Fico and Guarranty Fund, with Interstate, leaving the state with a CNA program, BJC leaving the state.

I heard a comment earlier in the presentation, not all those companies were leaving because of low prices. Well, you know, I can't say that Pie went under because of what they charged in Missouri. It's what they charged everywhere. Same thing with Fico, but they were charging rates that were too low here just as they were charging every place else. I can't say that Interstate or CNA left because their rates were too low in Missouri. I can say that they left the state, and certainly Interstate and CNA, if they could make money here charging at those rates, you would assume that they

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might have stayed.

I think that this meeting hopefully will be a springboard to try and help us figure out where we might go from here. I feel like I ought to almost apologize before I start on the discussion of the report. I'm not going to be critical of the report, because I think you have accurately put in information that you had before you. What I would like to point out are a few things that have to do with some reporting problems and conclusions drawn from the report. The reason I'm doing that is you're aware, it seems, that the suggestion that insurance companies are writing at rates that are not justifiable come largely from the conclusions that have come from the report.

One of the things that has been suggested as a result of the report is claim counts are down. I would ask the Department to take a look at whether all doctors are included in that report. If the claim counts are down and all the doctors are included, that's one thing. I can tell you that there are approximately 700 doctors who are insured by self-insurance plans of two hospital systems within three miles of my office, and I can't find them anywhere in the report. That's 700

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within three miles of my office.

The National Practitioner Data Bank indicates that claims in Missouri are up 33 percent.

DIRECTOR LAKIN: Andy, if they are self insured, how would that affect you?

MR. BENNETT: Because if they are not included in the claim count -- you're saying that the claim count, the Department's second claim count is down --

MS. MORRISON: It's not.

MR. BENNETT: -- how can you tell that?

DIRECTOR LAKIN: Of the doctors that are not self insured?

MR. BENNETT: If you've got 700 doctors --

MS. MORRISON: They move, Director. They move from being in our group to self insured. So that when you're trying to compare -- when you're trying to watch the trending line, they have moved and their losses are still out there, and they're still increasing the severity and the frequency. It's just that they are not reported. And we've had this discussion, and we can talk about it, some more about it, how to change your report so that it's meaningful on a going-forward basis.

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MR. KABLER: If I could comment very briefly on that. The law does require self-insured entities to report back to medical malpractice claims. The problem is our Department has no jurisdiction over those entities, and there's no penalty provided in the law if they don't. And we don't know -- have any master list to go to, to determine where they exist. We have been picking them up to the best of our ability, in spite of those obstacles. And the data base is, I think, significantly improved our efforts to try to pick up those self insureds.

MS. MORRISON: And, Brent, I want to be clear. Neither Andy nor I want to come here and criticize the Department. We've met with you one-on-one to give suggestions on how to increase the reporting so that there's no confusion in the Missouri market. It's a fact, frequency is increasing. It's a fact, severity is increasing. Do you want me to talk about a specific case? I was in trial two months ago in the City of St. Louis. It was a death of a young woman, failure to diagnose cancer --

DIRECTOR LAKIN: Geri, to talk about a specific case, I don't think that's why we're here

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today, but I would be interested to know where your data is coming from, showing that the cases are increasing. And if we can improve our data collection, I'm all for that. But I think it's important, again, that we work together to arrive at what the facts are on this.

MS. MORRISON: And I agree with that. And, again, I've made that offer, and you guys have been very accommodating. Neither one of us have criticisms other than to try to get the information out to the physicians of Missouri now that there is a problem.

DIRECTOR LAKIN: And I think the reason we're having these hearings is just as I said a number of times already, to get the facts and make sure that when we go to the next step, and that is problem solving and public policy making, that we're making those decisions based on facts so that I can advise the legislators when they ask me the questions that I'm not giving them misinformation. And the people that testify are held accountable as well.

MR. BENNETT: And, Brent, that's why when I started this part of the discussion, I had to sort of apologize. I'm not suggesting that you

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either could or should have done something else with your report. My suggestion is, is that the conclusions that are being drawn from the report need to be very carefully drawn, and perhaps other things looked into. Perhaps your jurisdiction extended. And I think that would be a great idea if you had greater authority to require reporting and to have to keep them so they actually do something. I recognize your problem.

In fact, my next point was on the issue of severity. I think, Brent, your report, you had a slide show that overall over a period of time severity has gone up and there's no question that that's what happened. It showed in 2001 it went down slightly.

DIRECTOR LAKIN: So you would have no problem if we, as a Department, were given more authority to request information and had some kind of penalty provision? Because I just got out of a meeting yesterday where a lot of the insureds in the state were complaining we were asking for data bank through a data call and saying how disruptive it was and all this. But you're saying you would support that?

MR. BENNETT: Yes. I'm sure at some point

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in time five years from now I'll say what was I thinking of?

DIRECTOR LAKIN: That's why I have a court reporter here today.

MR. BENNETT: They are now in my office more than I am. But I think that there are some things that the Department does need to have greater authority on. And that's certainly one of them, to be able to get the information you really need to make this a viable report that has a greater basis for forming some of these opinions. You need authority, you need to have teeth in it.

You had asked, Scott, earlier in a discussion with someone else, I think they had been talking about the issue that Missouri insurers are basing their rates on other states. And I think you had commented, well, the Department would like to have more authority to prevent that or to look at that, but insurers -- there might be insurers presently in the state that would leave the state. We would welcome that. That's another issue. I don't have a problem --

DIRECTOR LAKIN: Do you think we'd get resistance from other companies selling medical mal? I mean, you-all base it in Missouri, Kansas,

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but if we required that of a company that's sold in 35 states, do you think they would be opposed to that?

MR. BENNETT: My thought, Scott, is that if the companies that are charging responsible rates in Missouri, not charging excessive rates, but what they need to stay in business, are willing to go along with this, if there are companies that don't want to, then there's a reason that they don't want you to see what their rates are because they are probably doing just what you're suggesting that they might be doing. And other companies will come in.

DIRECTOR LAKIN: See, my fear is you get a state like Florida that has basically, like, a Public Service Commission, like we do with utility rates. And if you're an insurer, you have to file your rates and have a hearing in front of Florida's Department of Insurance. And they go in to my colleague, Tom Gallagher's, office and say we need a 30 percent rate increase. And Tom says, no, you know, I'm not going to allow that. It makes me look really bad when I allow 30 percent rate increases. I'm going to allow a 9 percent rate increase. And that 21 percent difference has to be

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made up somewhere.

And what my fear is, is that if you've got companies that are writing in 35 states, they have to cost shift, you know, that loss of premium somewhere or pull out of the market completely. And that's the other fear I have is if we're not careful, then when we actually make medical malpractice insurance less available because you have companies that won't come in Missouri.

MR. BENNETT: I'm not saying that I -- I agree with the premise of you can't charge a rate unless we have your approval. That does create problems where our actuaries --

DIRECTOR LAKIN: I don't really want that authority, to be honest with you.

MR. BENNETT: Because our actuaries say, we've looked at everything. You need to charge X, and your actuary's looking at it and saying, no, don't let them charge X. And you're not going to be able to write business here. I want to, but I can't ignore my actuary. But I guess what I was trying to say, I think you do need more authority to find out whatever information you need to have -- to find out if companies are doing what you're concerned about.

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DIRECTOR LAKIN: Your point on our statistical analysis is well taken. And now that I've completely interrupted your testimony, let's get back on track.

MR. BENNETT: One thing that I believe the Department knows, that I think was already mentioned in Randy's comments on the physicians here. I want to make sure they understand. When we were talking about the lost loss ratio that shows up in the Department's report that said it was 61.9, and I think Randy McConnell did point out that that doesn't include LAE, which is lost adjustments expenses, the cost of what it takes for us to hire attorneys, to get expert witnesses and all of that. That's not included within that 61.9 percent or above 61.

So if you hear from someone that, well, what's happening is the insurance companies are taking in a dollar, and they are spending 61 cents, that's not what's happening. The Department didn't suggest that that's what happening. His concern that there are people who are making that comment is not accurate. What you need to understand is there are two other things, start out with that 61 percent, then you have the lost adjustment

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expenses, which can vary depending on how companies decide to handle cases, how aggressive they are in defending.

And then let's say that may vary from 20 to 40 percent, and then on top of that we have the expense ratio, which is what it costs to run your office and have an office and employees and that kind of thing. Typically that runs somewhere in the range of 20 percent or so. So if you have a 61 percent percent loss ratio, and a 30 percent LAE, which we include in that ratio, and then you have a 20 percent expense ratio, that means you're paying out $1.10 for every dollar you're taking in. And it's not quite as simple as that. There is income then that comes in from your investments.

But just in a real nutshell, I just wanted you to understand that if you hear that figure that the companies are taking a dollar and paying out 61 cents, it's just not accurate. And, again, that's not what the Department suggested. I'm afraid that some people are using it that way.

One other thing that has been suggested, is that in 2000 there were 27 companies writing insurance in Missouri, and in 2001 there were 32.

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And therefore, there is no medical malpractice market trouble. What I want to clarify with you is if you look at the top six carriers in the year 2000, three of those companies are now not writing in Missouri. So it's kind of critical that you look at not just total numbers, but who is writing what.

If you take the top six carriers and three of them are gone, that's suggesting that there's market trouble. If they have been replaced by -- I didn't write the number down exactly -- let's say 10 carriers that are each writing one-tenth of one percent of the business in Missouri, that doesn't mean that we don't have trouble and everything is peachy because we've got some carriers that are writing one-tenth of one percent of the business.

DIRECTOR LAKIN: But, Andy, on the reverse side of that, the reason those three left wasn't necessarily Missouri experience, was it? I mean, they left because they pulled out nationally from the medical malpractice market.

MR. BENNETT: To be fair, it is overall.

DIRECTOR LAKIN: So it's not market trouble caused by Missouri experience, as much as

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market trouble caused by national experience?

MR. BENNETT: Well, but I think it is Missouri experience --

DIRECTOR LAKIN: Or more businesses seem to pull out entirely.

MR. BENNETT: I think it is in large part our business experience in Missouri, because the ones that just quit writing nationwide, I would agree, you can't really base much on that. But if Missouri was a good market to write in, there would be companies that would be coming in and getting 10, 15 percent of the market. And what's happening is, the physicians who can't find coverage because there aren't people coming in, because it's not a good market right now, and they are scrambling to find coverage somewhere. And that's where these companies that have one- tenth of 1 percent, they've been lured in on a surplus-lines basis to write an account.

DIRECTOR LAKIN: But also what I'm hearing is that unlike -- you know, on business administration at William Joel College, I learned that growth is good for business. It's not that way in insurance. A lot of times what I'm hearing is the carriers say, you know, we can't afford to

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take on too much business too fast. And so we'd love to go into that market right now, but we can't take on any more risk, we can't take on anymore business because it would be over our growth and it might affect our AM Best rating and all these kinds of factors as well. So it's not a pure market in that sense, traditionally, that you think of as far as market competition. I don't know how we get over that.

MR. BENNETT: That's a good point. We are one of those companies who are not taking on new insureds right now just because of the volume. But if you look at the true market, and if this is a place where money can be made because insurance companies here are charging too much, there are companies that spread into other lines of business at the drop of a hat. And my suggestion to you is they would here. They would have been here a year ago if this was a good market.

MS. MORRISON: May I comment, Director, on that, about foreign carrier sensately? I don't think it's coincidental that some of these companies made a decision to exit right after the Scott decision. They are actuaries, and they had them on staff would look at that and know that

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there were long-term ramifications. So they started to see some adverse trending. That would factor into it and encourage their decision to go ahead and exit.

DIRECTOR LAKIN: Even before anything regarding Scott -- I mean, I don't know what you call it. Any cases that --

MS. MORRISON: The Scott decision changed every case in the pipeline. And that means cases that have been open for 10 years and pending that we had already placed an estimate of the closing amount on have been impacted by the Scott decision.

DIRECTOR LAKIN: You had to go back and re-adjudicate or readjust your book of business.

MS. MORRISON: Exactly. You had to increase your estimated losses, which would cause -- and those losses normally wash through the current years income. So they would see that. And, again, my opinion is, when they --

DIRECTOR LAKIN: Do you set your premium to cover that whole readjusted loss at once or do you spread it out over --

MS. MORRISON: It depends. Back in 1986, Medical Defense Associates actually did an

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extraordinary item on the financial statement, and they worked with the Department on that. But normally if something like this happens, it washes through the current year. The way it works, is the actuary does what they call squaring the triangle, and they actually re-estimate each open year at the end of a given year. So, for example, in Missouri where we have a 20-year statute of limitations, any premium I collect in 2002 will have losses attaching to it until 2022. So when I do my financial statements in December and assign a net income, it's based largely on an estimate.

However, in 10 years, a lot of those cases will have closed. And, for example, if I estimate my losses in 2002 to be $12 million, and by 2012 I've paid out 20, then I know that I missed the mark on my estimates this year, and I have to develop reserves. So it happens. Normally it's ongoing. Every year you're taking another look with each year maturity, because you've paid more checks, and you can pop more of the estimate into the pay column instead of the open column.

MR. BENNETT: I'll kind of wind up, Scott. Geri and I agreed yesterday that I would take seven-and-a-half minutes, and she would take

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seven and a half.

DIRECTOR LAKIN: I'm having trouble keeping track.

MR. BENNETT: She's not going to let me go first next time. Just briefly, to kind of summarize, I think I've thrown out some things for discussion. We need to work with the Department on it. That's one thing that's kind of crucial in all of this, is that we really should -- are not and should not be working at odds. Your purpose is to protect consumers and insureds and keep companies writing in the State of Missouri to fill a need. And we want to fill that need, and we need to do it responsibly. And I think we need to have actuaries get together and look at the data to make sure that the real detailed data is looked at, and we know really where we are, and let you know where we are.

My concern at this point, and you and Geri talked about it, but my concern is whether or not we are actually charging enough right now. And this is not a good place to say that. I want to refer to the Scott case. The SSM case has put us in a position where we don't know -- when we wrote insurance over the last five years, we didn't know

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what we were covering. We thought we knew what we were covering. The statute that had caps attached to it, that's very easily identifiable as per defendant.

And the SSM case suggested that's not where our liability is. It's much, much greater than that. We also never intended to insure hospitals. We now insure hospitals because all of our physicians who are in-house, not even necessarily in-house, but hospital-based insureds are now -- most of them agents of the hospitals under the SSM ruling. And as most of you know that as a general rules, verdicts against hospitals are larger than against doctors. So I now have Intermed and Medical Assurance now and have much more exposure than we had at the time we wrote your insurance three, four, five years ago.

DIRECTOR LAKIN: Andy, can you or Geri address some of the problems that the doctors are having in getting quotes? I hear that continually from the docs. And I have some theories, but I'm more interested in what you-all think. You know your industry. I'm a former agent. Companies used to do back flips trying to get quotes for people in all lines. But I'm hearing over and over again

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that the doctors are not able to get quotes or there are getting quotes 24 hours before their coverage expires. Can you address any of that?

MR. BENNETT: Let me give you a 30-second question, because I'm impeding on Geri's time. But as far as we're concerned, we're not writing new business now. So if somebody comes up or calls up --

DIRECTOR LAKIN: For anybody? Not even current -- you're not renewing?

MR. BENNETT: We are renewing for insurers and intend to. In fact, we hope that in a short period of time we'll be able to open the doors and write new business. I just can't represent to everybody here that we are going to do that, but we certainly hope to and expect to. But right now if I get or our market people get a request in to write, although we have been pretty intense competitors in medical insurance. We say you might try them or you might try Medical Protective. And if they don't meet Medical Assurance's underwriting guidelines or Medical Protective for whatever reason doesn't want to write them, there aren't a whole lot of places left to go.

DIRECTOR LAKIN: Geri, do you want to say

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a few things?

MS. MORRISON: I refer to what happened this year as everything just hit the wall. It happened almost overnight. For those of you who know me, you know that I've been speaking to Missouri physicians for the past nine months saying we have an affordability crisis. It's going to advance to an availability crisis, and you better be contacting your legislators so where are we now? Medical Assurance have to pass the ratios, the ratios you were referring to earlier, regarding how much new business can you place on the books in a short period of time given whatever the loss ratios are in that period. Loss ratios turn on what the rates are.

With St. Paul leaving, with Fico going into liquidation, with CNA pulling out, Chicago Insurance Company was an interesting one. This year they were doing 300 percent rate increases because that's how far underpriced they were. When that didn't effectively run off the business, which let me tell you, that's probably what they were trying to do. And in my opinion, that's what they were trying to do. When the doctor said, okay. You take my $2,000 premium, and even if you triple

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it, my $6,000 family practice premium is still cheaper than with Medical Assurance. I'm going to stay with you. At that point they said, whoa. That strategy is not working, so they exited.

So what happened was, we had this huge number of physicians looking for coverage overnight. We can't destabilize the physicians that have been in our group for years. So we have to be extremely careful with the underwriting. We have to be extremely careful that we take a long hard look at each physicians' application. And we've been struggling through stacks and stacks of applications. Meanwhile, our doctors, who have been with us -- some of them for 25 years, have to be renewed. So it's not as though our workload has decreased. It was there. We had a full workload, and then we had this onslaught of business. So it's calmed down now. You have probably are hearing fewer --

DIRECTOR LAKIN: And that's delayed your ability to get quotes out? I know I've heard --

MS. MORRISON: Yes. Yes. As of today, underwriting is still working 12 --

DIRECTOR LAKIN: Instead of 20 requests, you're getting 200 a week or something?

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MS. MORRISON: Right. If I put bodies in the building, they still don't have the expertise to quote. It's not something that can be done by temporary personnel. It has to be a trained underwriter who can prepare the quote.

DIRECTOR LAKIN: Are you willing to maybe extend coverage for a month or two or three until the doctor can get a legitimate quote in front of him and make a decision or --

MS. MORRISON: We have tried to work with each situation. And I can tell you that we are still trying to do that. And I can also tell you that the workload, even though it's still very large, it's lessening as time goes on. I've actually hired three or four people who are trained, who are handling it. I bring in some troops from other places. So, yes, we will try. And if you have someone specific, call me. I will do everything I can to get it expedited. But keep in mind, again, we have a loyal book of physicians that we have to service them and --

DIRECTOR LAKIN: No, I understand.

DIRECTOR LAKIN: Anything else? You guys are very brave.

MR. BENNETT: I think it would be helpful

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if we can get together and go through some realistic data that supports that. I think it's imperative that we kind of get to the bottom of where the problem lies. I know it's been thrown out that it's an investment return problem. I can tell you the difference between our investment return in the year 2000, 2001, which was almost nothing. Almost no change. The return between 2001 and 2002, maybe 1 percent change. So I don't think we can point it at investment return. Physicians need to understand, insurance companies aren't out there buying stock in Enron. They are making extremely --

DIRECTOR LAKIN: Not anymore.

MR. BENNETT: I am. Is that a bad thing?

DIRECTOR LAKIN: They are selling stock at Enron, but not buying it.

MR. BENNETT: Surely conservative investments. Certainly reinsurance is more expensive than it used to be. I don't see that turning around. And I think what's important for us to do is to look very seriously at where we are and where we're likely to be. And if reform is something that is the solution, then we need to look closely at that and see what would work.

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DIRECTOR LAKIN: Go ahead. I just want to thank you. And also want to make a comment that if we are going to solve this problem, it's going to be all of us working together and not working apart from each other, so thank you.

MS. MORRISON: Could I say one thing, Director? You've asked what can we do to increase competition, and I think Andy and I are both in favor of increased competition in this state, because we cannot handle all the business in act of tort reform. That will increase competition. Immediately it will happen overnight. You pick the Scott decision, you strengthen the affidavit of merit, and you alleviate venue shopping. You do those three things, and I promise you, insurers will write in this state.

DIRECTOR LAKIN: There's a balance there. I'm not taking in sides in this. But what I'm saying is, I would love to own an insurance company where I could take in premiums from doctors for malpractice insurance, and then have the loss set up in such a way that I would never have to pay out any claims, there are very few claims. I mean, that's an ideal situation for insurers in this state.

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MS. MORRISON: I'm talking about the fairness issues. What's fair about a Joplin doctor --

DIRECTOR LAKIN: That's a perception issue.

MS. MORRISON: No. No. Really, what's fair about a Joplin doctor finding himself in trial in the City of St. Louis? Nothing. There's nothing fair about that. And how did it happen? Not because anything happened anywhere near St. Louis, but because the doctor left the state. And if you're not a resident of this state, when you're sued -- although it happened in Joplin. The medical incident happened in Joplin, you can pick any venue. That is a fairness issue. I can't see how anyone can argue that point.

The Scott decision -- I eluded to a case earlier in this discussion -- the death of a young woman, the economics damages were 3 million. There was no dispute the economic damages were owed. The non-economic cap, of course, should have been $550,000. After the Scott decision, the plaintiff's attorney argued 27 caps apply. One insured, one patient. Does anyone think that anyone in this room can afford 15 million in

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non-economic damages? You can't. And, again, those are two items that are so simple for even the rookie legislators to understand. It gets down to fairness. It gets down to affordability.

DIRECTOR LAKIN: I mean, the Scott decision has been talked about. I just want to make clear that I'm not the Scott they are talking about. Thank you very much. I like the SSM decision a lot better.

We'll go with the brokers, John Keane of the Keane Group of St. Louis and Kathleen Pinkham with Arthur J. Gallagher and Associates.

MS. PINKHAM: Thank you so much, Director Lakin, for asking us to participate in the hearing today. We really appreciate the chance to be here. I am a doctor at J. Gallagher and Company. We are an international insurance brokers fourth largest in the United States. Our company insures over 50,000 doctors nationwide.

MR. KEANE: And I'm John Keane. I'm the President of Keane Insurance Group. We're a brokerage firm in St. Louis. The Keane Insurance Group insures more than 2,100 physicians primarily in Missouri and Illinois. Missouri Gallagher and Keane in 2001 together insured more than 3,000

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physicians with more than $30 million in written premium.

MS. PINKHAM: We know it's been a long afternoon for everybody, and especially appreciate your willingness to accept our view on these matters which are important to all Missourians. In the interest of time we have prepared written testimony that we'll leave with you with additional details about our testimony.

MR. KEANE: BankOne practice has been one of the hottest topics in our industry nationwide this year. There's no question, it's been stated numerous times, we're now approaching a crisis, and we are in a crisis. And in my opinion, in the experience of, I think both Kathy's firm and mine, we have been in a crisis for quite some time now. We welcome the opportunity to join with the Department and the physicians and hospitals, the legal community and other in assessing and analyzing the situation in mutually developing solutions.

MS. PINKHAM: We bring somewhat of a unique approach or knowledge base to the table. We are program managers. We have been for a number of years for insurance companies. We are also

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brokers. We work directly with physicians and analyzing their coverage needs and advising them on the most reasonable premiums that they can get for their specialty and their risk factors. We work with the insurance companies to help them understand each individual doctor's situation and the risks that they bring.

MR. KEANE: As we've already heard, this has not been an easy time for the past couple of years, actually. It's the broker's job to advise physicians regarding their options faced with significant premium increases. The realities of malpractice marketplace have made it much more difficult and complicated here recently. It's been our practice to advise doctors of premium rate increases well before the deadline to renew their policies and seek alternatives. Many times we seek quotes several months before the renewal, only to find insurance companies overwhelmed with requests.

And has already been stated, it's been very difficult to get quotes even sometimes a week or a couple days before the renewal of the policy. In the meantime, physicians are hearing horror stories. They are hearing what's happened to their

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peers. They are sitting around waiting to find out exactly, you know, what is going to happen with their rates. It's a very difficult situation for both them and us as we work with insurance companies that we have available to us trying to get quotes, understanding that they are inundated with submissions, having a hard time getting to our submissions. In the meantime, physicians are approaching panic as their renewal dates come up. They are hearing what's going on out in the marketplace, and they are not knowing what that means for them. We're faced with difficult situations.

On the one hand, we feel responsible to prepare them for the potential if no standard insurer will write them, what that may mean in the non-standard marketplace. But we have to be careful that we don't alarm them unnecessarily. The underwriting rules have changed quite a bit. Because the insurance companies are receiving more quotes, they are becoming more selective -- receiving more submissions, we find them becoming more selective and picking and choosing what they will and will not write. And sometimes it's difficult to anticipate whether a physician will

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get a quote in the standard market.

So on the one hand, we try to prepare the doctors for what might potentially happen without alarming them unduly with a fear of enormous rate increases. One thing I would like to point out is that we as brokers make our living not by raising premiums, but by researching the market and trying to find the best coverage at the best price for our physician clients. Using this approach, we work very hard to find coverage for our physician clients in this difficult market, and we don't see it really getting any better or easier going forward.

MS. PINKHAM: The insurance companies are making their business decisions on the models that they have in front of them. The financial models that they are working with are actuarial triangles and such. They make decisions about the rates and the acceptability of each risk on a business decision that they need to make. Economic realities dictate the behavior of the insurance companies, as well as out of other companies that are authorized to do business here, but choose not to write medical malpractice here.

MR. KEANE: As the snare of the spike and

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jury awards strictly pertaining the suffering, you can see how this has placed additional pressures on the market. We can all agree that true victims are entitled under our system of justice fair compensation. As one major insured recently stated, one jury will look at it one way, another will look at it another way. There's really no accurate way or it's very difficult to accurately underwrite them. Andy talked about you make decisions, present decisions today based on what exists today. Five years later the rules all change, and you can't go back and change the prices you set five years ago.

MS. PINKHAM: I want to reiterate, too, both Andy and Geri alluded to that scenario in the Scott case, which we'll always remember it as one actually that the defense attorneys that I work with have told me it's a very serious situation here in Missouri. It does change, sort of, all bets are off the rules are different, and the insurance companies need to make their decisions based on the fact that the rules are different.

Missouri laws are lacking because they provide precious little framework for accurate actuarial calculations of the monetary risk of

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medical malpractice jury award. Again, you have worked through this situation, as you have said today. I have been a Missouri broker for many years, and I know about the Work Comp situation. And the Missouri Division came in and helped alleviate that situation.

This is a serious situation. And I don't think we can say it too adamantly that tort reform is one of the ways to address this.

DIRECTOR LAKIN: Are you saying you support something like a Missouri Employers Mutual for medical malpractice?

MS. PINKHAM: I'm saying more that --

DIRECTOR LAKIN: I thought you were going to say that.

MS. PINKHAM: I'm saying more that the insurance companies need to be able to accurately and adequately predict what the cost of claims are going to be. That's what insurance is about. And in order for them to it and in the absence of that, they have to charge the highest rate possible or potential for the highest potential problem. And this is the one that's downstreaming to our doctors that they are saying we cannot afford the highest rate possible. Many of these that are talking

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about their rates, are talking about their rates in some of the high-risk markets where they are having to buy tail coverage now from the standard market and go into a high-risk market.

Or as one doctor testified, they had to buy a tail coverage from a high-risk market that's leaving the market and buy another policy from a high-risk market. And the premiums are extremely onerous, and they do not -- they are not able in their financial models within their practice to afford these rates, because of the reimbursement. It's a circle. But it's one that the insurance companies have to live within that circle of providing a rate that it's appropriate for the risk that's out there.

DIRECTOR LAKIN: The rates were going up before the Scott decision.

MS. PINKHAM: Yes.

DIRECTOR LAKIN: That was when the companies thought they had caps or perceived to have those caps. How many companies are writing -- how many do you write or do you place? In your perception how many are writing in Missouri?

MS. PINKHAM: Well, as you have mentioned, my life has been good this year. My top company,

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my Chicago insurance withdrew. My second largest company was St. Paul, who withdraw. And my third largest company was Intermed, which is not writing new business. So I made new friends. And we do write with Medical Assurance.

DIRECTOR LAKIN: Temporarily.

MS. PINKHAM: We continue to offer renewal through Intermed. We work with Medical Assurance, we work with the Doctors Company, which is actually a California-based PIAA company. Those are the three companies that we find are open. Medical Protective, which is -- Medical Protective, we've worked with for a number of years and is a national underwriter.

DIRECTOR LAKIN: There are other states that have physician associations that I think are opening up their associations. They write medical malpractice for their docs, and they are opening those up to other docs in other states. Do you know anything about those?

MS. PINKHAM: I am aware. I've read that --

DIRECTOR LAKIN: Minnesota, I think.

MS. PINKHAM: -- the Minnesota Company and the Physicians Insurance Company in Wisconsin and

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planning on coming into Missouri, Wisconsin.

DIRECTOR LAKIN: Are you going to market then, that group?

MS. PINKHAM: I'm not real familiar with them. I'm sure that they are on the radar screen to look at, to talk to.

DIRECTOR LAKIN: John, do you agree with everything that she just said?

MR. KEANE: Absolutely. That is obviously one of the great difficulties is the number of companies or the lack thereof. And one of the things that I know Kathy has spends a lot of her time, as do I, is contacting these companies, talking to them, trying to interest them into coming into Missouri. And the difficulty is that they are experiencing the same things in the states that they are in by and large to one degree or another. There just really hasn't been much interest in coming into Missouri for multiple reasons.

One being, that they are overwhelmed with business they have where they are at. But the other common theme that I hear when I'm talking to these companies, is that Missouri is not a desirable state to come to. It's not very high on

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their list. When they do begin to expand, they don't see it as a very desirable state.

DIRECTOR LAKIN: Do you educate them on that?

MR. KEANE: We try. We to try paint it as pretty as possible, but --

DIRECTOR LAKIN: I can't believe that we have anymore -- or I mean, lawsuits than a lot of these other states that are considered regarding writing them.

MR. KEANE: You would be surprised how much these companies communicate. And the SSM decision is known.

DIRECTOR LAKIN: I could see where that would affect their desire to coming here in the future or expanding till that sort of filters its way out. But I mean --

MS. PINKHAM: There are some things that just a way of painting a bleak picture. There are some things that insurance companies really like about doing business in Missouri. The fact that they are able to gain ready access into the state and to file rates that they can use immediately, that is very important for them and creates -- usually it creates more availability in

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competition. It's just that now it's seen as a venue where there is some uncertainty about the cost of plans.

DIRECTOR LAKIN: I'm wondering if there's any company that's doing medical mal is looking to expand at all. I mean, it sounds to me like they can't because their capacity is -- they have reached their capacity.

Anything else?

MR. KEANE: Well, now that we have gotten off our little script.

DIRECTOR LAKIN: That's my strategy.

MR. KEANE: That was good.

MS. PINKHAM: I was going to talk a little bit, too, about the joint several liability, the ability of an injured party to take damages to multiple sources. That's one of the factors of Missouri law that has made it difficult for insurance companies to predict the cost of claims. And their particular exposure to any one physician that they might insure when they go to adjust a claim. Reform of this approach would eliminate the search for deep pocket and reduce the number of lawsuits against those on the edges of medical situations that determine the allowed insured more

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accurately assess and accept risk that a minimally libel party may have in any given situation.

This, again, is a -- this ability to predict is what's so important now. And underwriters with this new mentally these days of looking so carefully at each risk factor. If the doctor has ever had any experience paid or not paid claims, they consider it averse to them, because they use it as a predictor of future behavior.

DIRECTOR LAKIN: Do you notice the underwriting tightening up tremendously in the medical malpractice market? Not just because of premiums, not because of inundation of applications or submissions, but just generally the risk adverse, aversion that I mentioned earlier.

MR. KEANE: I don't think you can separate those things. I mean, they all, I think, impact the reasoning behind it. But the bottom line is it ended. The bar has shifted, and doctors who a year ago could buy affordable coverage in the standard market, that have not had any change in their claims from last year till this. They find themselves forced into the non-standard market, and that's where you see the 5, 6, 700 percent rate increases, is when you go into the non-standard

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market.

And the reason for that, in my opinion clearly, is availability issue. There aren't companies out there, enough companies out there to handle the volume of standard business who have had in the past.

MS. PINKHAM: I was going to mention, too, the 27-year experience of California with the medical malpractice regulation and legislation. In the 1960s and early '70s, medical liability costs increased 400 to 600 percent for some physicians in California. This was talked about, again, in the insurance industry newsletter Best Week. We've talked about it a lot today. It's been brought up on a number of occasions. It's the Medical Injury Compensation Reform Act known as MICRA. Several positive provisions was put into place with MICRA that include, not only a cap on awards, but some responsibility -- the attorneys fees are regulated to some extent. And there are additional mechanisms within it. We do have details of MICRA in our written testimony.

Virtually everyone in California including groups organized to protect the rights of patients are on record of supporting the results of such

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legislation. It's been well received there. California is a state, and I'm sure that the you study it. For example, on the Work Comp side, Work Comp is not readily available in California. Their mechanisms have been set up to deal with the California Work Comp situation, but the legislation in place for doctors in California has allowed a number of companies to provide insurance there. And their rates are called reasonable. They are paying slightly more than doctors in Missouri are, but at least they have a number of companies that are writing and has been stable for a number of years.

DIRECTOR LAKIN: So you're saying that premiums in medical mal in California is higher than Missouri?

MS. PINKHAM: A little bit higher.

DIRECTOR LAKIN: All right. Thank you very much. I appreciate it.

MS. PINKHAM: Actually I wasn't quite finished. I would like to summarize the changes that we recommend to the Department. I have mentioned them before, but I would like to summarize. A change in the joint several liability provision in Missouri law, a firm cap of $250,000

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in non-economic damage. This one I would hope that you can help us with really soon. A standardized application for medical malpractice insurance improved management of companies exiting the Missouri market, including a required renewal of policies until the insurance can be replaced.

Better attention to state rating rules, which can be abused by insurers and punitive to insured, such as the cost of tail coverage, which the tail coverage provides a specified time following the policy expiration during which claims may be made against that policy. Last, but not least, we support activation of a joint underwriting association as an insurer of last resort for Missouri physicians.

Again, thanks for the opportunity to be here.

DIRECTOR LAKIN: Next to testify are the plaintiff's attorneys, Missouri Association on Trial, Trial Attorney Association, Tom Stewart and David Zevan.

MR. ZEVAN: Good afternoon.

DIRECTOR LAKIN: Go ahead.

MR. ZEVAN: Let me first say if this was a jury panel, I think I would have to strike most of

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them as being non-sympathetic going into this. So we're not expecting rounds of applause. I sit before you, not with thorns on my head, but as someone who cares very deeply about the people I represent and about people who are the victims of medical negligence.

I heard from the doctors and just about everyone, and everything does agree that medical malpractice does exist. It occurs. There seems to be no dispute about that, but I think there's a lot of misconceptions about what we do. And I think a lot of that is simply lack of communication between us. Perception is not reality about what we do and how we do it.

I know we don't want to talk about specific cases. I heard you say that earlier. But for lawyers, we can't portray ourselves any other way than to talk about our clients. I won't go into great detail about the young man that's sitting down here in front of you in his wheelchair, but suffice it to say, Paulie Pandino will remain in that wheelchair most likely the rest of his life. And there are two physicians who are on record as blaming each other for that negligence.

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It's hard for me to stand before you or sit before you and know him the way I do know and know what the future holds for him. And to listen to everybody talk about California, when I know I hear Missouri is more profitable in the lines of insurance. I hear about why the rates are going up being tied to the stock market. We know St. Paul insurance lost $108 in Enron stock. And rates are going up, and we understand that with the doctors. My own legal malpractice insurance was recently canceled by Interlec, and I don't have claim. It's not just you. It's all of us.

Of course, you're not going to be sympathetic. We're not going to adhere into the the lawyers go out of business, I ensue. But the point is, this is not just doctors. This is across the board. But what we're talking about are numbers. And we're forgetting about the people that this is going to most affect.

Paul's going to have -- be gainfully employed someday, because he fully understands. And he's in a regular school, but he wears diapers every day and that's not part of his economic damages. Those are part of what we call the non-economic damages. And for anyone to sit here

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and say that $250,000 for the rest of his life is fair, we heard about what's fair. We want to be fair to the doctors. Paul is heavily dependent on his doctors.

In fact, one of his doctors recently wrote a letter that was filed with the Division of Insurance because he -- and with, I guess, your Consumer Affairs Division, I want to go on record as crediting Dr. Vernon Roden, who is his pediatrician, for fighting on behalf of Paul to get a walker to help exercise his legs. But it was denied by GHP, because it's therapy and that's an exclusion in the policy. Well, I'm going to fight for Dr. Roden, and I'm going to fight for Paul. But it's an example of the patient and the lawyer and the doctor being able to work together for his best interest.

But I'm not going to be able to go to trial and claim that Paul is going to have future economics of lost wages, because he's going to be employed. His medical bills are in question over whether or not they are going to be paid or not. We can see that from what or GHP has done. And under present Missouri law, I am capped at $547,000. What goes into that? The cost of his

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diapers, the fact that he sits on the playground everyday and watches the other kids play at a normal school. I mean, I know all of you care about that, and I know all of you go into the medical profession because that's exactly what you want to avoid. You're there to help people. We know that.

But let's not forget about these people when you march into the legislature to talk about $250,000. Think about them. Think about what that means and think about the fact that we're much better off if we team up together to keep doctors in business to help Paul Pandino. And $547,000 today is really not going to do that much for Paul. I submit that that's not fair.

DIRECTOR LAKIN: David, is it your opinion that the Scott decision has changed that equation?

MR. ZEVAN: Well, I hear -- today's our first chance to hear from them about the Scott decision. It hasn't -- and my practice had a serious effect on it. I do almost exclusively medical negligence cases. I have a doctor who works full time in my office evaluating incoming cases and reviewing them, so that we don't file frivolous cases.

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I'm proud of what I do. I'm proud of the way I do it. But Scott doesn't excite us the way I think it seems to be scaring everybody. Because we see Scott as a very isolated set of factors that we don't think comes into play. Since the Scott decision came down, and I have been fully aware of it, I've tried three cases of verdict, and I have not submitted on Scott once, because the facts didn't support Scott. I know that we've got reference to other people, and I heard other people saying that it's playing a role to us. It's too early to tell. Rates were going up before Scott. And No. 3, it sounds like the we to get everybody scared and raise their rates to us, because we don't seem to be very -- at least in our group -- we don't seem to be really pounding on Scott. We just don't see it yet. It doesn't seem to us to be a factor.

DIRECTOR LAKIN: Are there any reforms that have been mentioned today that you feel have merit?

MR. ZEVAN: Well, the affidavit is -- you know, I have also acted as personal counsel for doctors. That happens from time to time. I like to think that my brothers and sisters always will

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have an affidavit of merit that will support the set of facts. Because you can't go to trial -- I mean, and Tom was going to get into this part of it -- but economically it is not in my interest, Director, to pursue a case that's non-meritorious. And these cases get weeded out. You know, the cases that --

DIRECTOR LAKIN: They get weeded out in the courts, but they are not got getting weeded out in the underwriting of insurance companies apparently.

MR. ZEVAN: Well, to me, I know in my office, I can open up my drawers -- I open up my drawers -- open up my file cabinets to anybody and say, pull out a case you think is frivolous and tell me my certificate lacks merit. Now, I may lose that case, and I may be wrong, but don't tell me it's frivolous. That's a leap I can't make.

DIRECTOR LAKIN: Are there other lawyers that are filing frivolous cases?

MR. ZEVAN: I hear that. I cannot say I have personal knowledge of it. Now, defense lawyers like Jeff Brinker and I are on the other side of cases all the time. And maybe Jeff's in a better position to say what he sees. I can only

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say in my office, and I'm sure I can speak for Mr. Stewart out of his office, it doesn't make sense to file a non-meritorious case. It's economically --

DIRECTOR LAKIN: And what I'm saying is that I think the bigger problem is that it's being considered in the underwriting of medical malpractice insurance for doctors. You know, I think that -- and I've never been one to limit people's access to the courts -- but what I'm saying is, we need to sort of distinguish between frivolous and not when it comes to the underwriting of the medical malpractice. I think that our purpose of these hearings is to get to the root of the cause of the problems of the medical malpractice problems, not try to do tort reform on a widespread basis.

MR. STEWART: Mr. Director, I think you touched on this earlier, that there have been reports of risk adverse underwriting taking place. And the level of sophistication of an underwriting program that doesn't distinguish between a case that was filed and went nowhere, or a case that was filed and resulted in a defense verdict, which apparently 64 percent of the cases do, according to

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your statistics, versus a case that does have merits resulting in a plaintiff's verdict. If an underwriting department is not sophisticated enough to differentiate between those two types of cases, then the problem lies, not with the civil justice system, but with the underwriting process.

DIRECTOR LAKIN: And that's what I'm sort of getting at is, you know, how do we get these underwriters to take the next step and dig a little deeper in their underwriting. And maybe take, you know, decided cases, rather than just filing cases.

MR. ZEVAN: But wasn't all that taken into account in all the years since 1985 whether the companies were profitable? Well, Medico was a company that just wrote policies in Missouri was sold for a profit, significant profit, because they just had risk in Missouri, wasn't all that taken into account, and why is this all happening now when we're being told we didn't take that into consideration before, the so-called frivolous cases. That had to have been taken into consideration.

DIRECTOR LAKIN: We've asked ourselves that question about every day for the last five months or so. And I think that's what we're trying

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to get at is why -- you know, what are the root causes of this problem and what can we do about it.

MR. STEWART: Mr. Director, I think today, at least it's shown to Missouri Trial Lawyers, I think two undisputable facts. But the first is undoubtedly the doctors are facing an insurance crisis. I don't think that any way to dispute that fact. The second undisputable fact is it doesn't belong. That is, the problem doesn't belong with the civil justice system. Every number that we've seen, whether it's number of claims filed, price per claim paid, the quality of the claim, that is the more severe claims are going up, reflects that a civil justice system that is working.

I heard from our friends at the insurance industry the phrase, put the evidence on the table, when talking about insurance carriers that insure in Missouri and other states. Well, I would suggest to them if you think the Insurance Department numbers are wrong, put the evidence on the table. You can't come into a hearing like this and say, well, we think the numbers are wrong and there really is a crisis and it's coming without some type of evidence.

MR. ZEVAN: Tom, I have something that --

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actually, if you don't mind, to follow up on. FDIC insurance group sent out an annual report, which I have got a copy of. And, of course, they own Intermed. So to say that Intermed only writes policies in Kansas and Missouri is wrong, because the rates were increased by -- their report says the company, meaning FDIC Insurance Group. The company increased premium rates at First Professional, APAC and Tenare in 2000. Tenare owns Intermed.

In their own report says they are sharing the risk in Florida, Missouri, New York and Alabama and Mississippi of these other groups. And it's not that they didn't raise the rates for any other reason. They raised the rates at the direction of the company, because follow the money trail, these are holding companies, and follow it to the top, Mr. Director, you see why the rates have gone up. They are sharing that risk outside of Missouri, and their own document will show it.

DIRECTOR LAKIN: You just generated a bunch of letters to me, you realize that, don't you?

MR. ZEVAN: Of course, there's not going to be a lot of agreement between us and the

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insurance industry. We have to call them out when we see this.

MR. STEWART: We have heard two statements made by various groups today. One, is concerning the Scott decision, which by the way was handed down in January of this year. As far as we know, there's no other reported cases based on that unique set of facts. Rates were rising before the Scott decision, as the Director points out. But yet the Scott decision, it's been opined, must have been the reason why three of the top six carriers left in Missouri must have been -- of course, no evidence is before us -- but is must have been based on the Scott decision.

We've also heard that the California system is kind of our savior. That all Missouri has to do is adopt California. But then kind of under the -- almost to the side we find out that Missouri really is doing better than California. Our rates are better, our rate increase program is better. But yet it's the California system that we must adopt.

And finally, Mr. Director, and I know that you know this, and I hope the audience does, when we speak of tort reform, it's easy to look at the

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lawyers. It's easy to make this a lawyer issue. Quite frankly, we're an easy target and many times we deserve it. But tort reform is about that young man sitting over there. That's what tort reform is about. That's who we're impacting. That's who we're saying that the current cap of $547,000 is too much. It needs to be 250. So it's not a lawyer issue. It's a Paulie Pandino issue, and the hundreds of people like him in this state.

And so the reason for bringing Paulie here today wasn't to enter any type of sympathy for our case, but it's to keep in mind this isn't about Tom Stewart and David Zevan and lawyers. It's about Missouri citizens who have been horribly injured. And I think it's important for us to keep that in mind.

I want to just leave with one final thought, at least as far as I'm concerned. There is, Mr. Commissioner, I think a fundamental misunderstanding of the way the lawyers that practice in the medical field operate. The last study that my office did, which was at the end of last year, 96 percent of the potential medical claims called into our office were rejected. And they were rejected after a great deal of time and a

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great deal of expense. David has a full-time physician. I have a full-time registered nurse. 96 percent of the claims that came to us are potential claims we said we couldn't help.

The system that's set up where the lawyer takes the entire risk, he takes the risk for his fee, he takes the risk for every dollar that's spent on these cases, sometimes reaching several hundred thousand dollars; requires that that lawyer choose claims very, very wisely. As reflected in your statistics that show that the severity of claims filed is increasing. Well, of course, it is. It makes economic sense that that would be true. You can't stay in business very long.

As one example we heard earlier this morning where some doctor was afraid of being sued because some guy was drunk, and he wanted to recover his medical expenses because of a life-saving procedure. I'm not denying that, perhaps, there is an occasion where a frivolous lawsuit was filed. But to suggest that that is the norm for this system is not worn out by the Department's own statistics. And it's not worn out by sound business sense by the lawyers that practice in this field.

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DIRECTOR LAKIN: David, do you have any closing comments?

MR. ZEVAN: Just that Tom's passionate. We're both very passionate about this, because there's are the people we have to address and deal with everyday. And we're also sympathetic to the fact that these are the same people that the doctors have to care of every day. We took an oath, you took an oath, and people acting on behalf of the State of Missouri who are here as well, I'm sure took an oath. These are the people we all need to protect. We need to work together instead of fighting each other to make sure that doctors have insurance, Paulie Pandino is protected and that's our focus. We all need to do that. And the Missouri Association of Trial Attorneys is ready to do that. Thank you.

DIRECTOR LAKIN: Thank you very much.

I want to remind everybody that any written comments or follow up that you-all want to submit, you can do so through the Missouri Department of Insurance internet public portal. You can testify. You can provide testimony over the internet. And that internet site is www.insurance.state.mo.us. Let me say it again.

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Www.insurance.state.mo.us. Some of you are probably disappointed that you didn't know that before you came down, but I'm glad you did come down.

I do regret that not everyone that wanted to testify has gotten the opportunity to speak today. As you know, we were time limited, and we are past our time of departure already. But I do want to encourage everyone that wants to give us input on this important issue to do so. And either over the internet, as I just mentioned, or write me a letter, and we'll include that in our report and our analysis. So, again, thank you very much for being here and have a safe drive home.

(HEARING CONCLUDED.)

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STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Mindy S. Hunt, CSR, CCR and Notary Public within and for the State of Missouri, do hereby certify that I was personally present at the proceeding had in the above-entitled cause at the time and place set forth in the caption sheet hereof; that I then and there took down in Stenotype the proceedings had and produced with computer-aided transcription and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 12th day of November, 2002.

My commission expires December 3, 2004.

_____
Notary Public - State of Missouri
(Commissioned in Cole County.)